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Introduction

At MacRoberts we are beginning to put things in motion for our Annual Charities Conference in February 2017 and booking details will be available shortly. It has been a busy few weeks for the Charities team. In her role as Chair of the Scottish Fundraising Implementation Group Val Surgenor has been speaking at various events over the last couple months, providing updates on the progress of fundraising in Scotland. For those who did not have a chance to hear from Val at the Institute of Fundraising Conference or the Wylie & Bisset Charity Conferences, you can catch up on the Fundraising Implementation Group on page 3 of this Newsletter or hear her at Holyrood’s Fundraising Standards and Regulation event being held in Edinburgh on 23 November. Val has also been out and about speaking about data protection and how the changes in the law will impact charities going forward. If you missed Val’s session at the National Homelessness Conference on 10 November, you can catch up on all things data protection by reading her regular blog series in [TFN](#).

Robin Fallas recently spoke about social care and social services procurement and commissioning at events held by EVOC and CPPS. Robin also spoke on 9 November at the Procurex Conference on “Social Service Procurement and the New Light Touch Regime – an exploration of scope for innovation and flexibility in service delivery design”. Please do get in touch with Robin if you have any procurement questions.



SCVO

The Scottish Council for Voluntary Organisation (SCVO) have launched new platforms to help their members – who consist of Scotland’s charities, voluntary organisations and social enterprises – to obtain funding for their organisations. They include:-

Funding Scotland

The Funding Scotland search engine was upgraded in July of this year. This helps projects or organisations to find and apply for funding. This search

engine makes available information on more than 1,200 funds from verified funders of Scottish projects.

Funding Scotland Digital Platform

This Platform is an advanced search platform which provides local authorities, public sector organisations and third sector intermediary bodies with a funding search that can be modified and personalised. The Platform is expected to launch in early 2017, after a pilot period.

Charity Reputations

The “GoodHQ” website was also launched this year. The “GoodHQ” provides a platform for people to share their personal experiences with charities and other similar organisations. The public have an increasing interest in charities and the work they are doing and while we are delighted to see charities benefit from this, we should also be aware of the ways in which this spotlight may affect the reputation of charities.

Knowing how to protect your reputation as a charity is extremely important, especially in the age of social media. In the next few months MacRoberts will be looking in more detail at how important your charity’s reputation is, and how you can protect it.

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OSCR Announcement Regarding Alterations to Charity Trustee Declaration Forms

When applying for charitable status, a Charity Trustee Declaration form must be completed. However, these forms have recently been updated and as of October 2016 only the new forms will be accepted. The new forms collect details enabling OSCR to e-mail charity trustees the details of registration and their duties if the organisation is granted charitable status. (These forms can be [found here](#).)

New Guidance for Trustees on Charities Litigation



On August 3rd of this year, the Charities Commission for England and Wales (“the Commission”) released new guidance for charity trustees in considering the merits and pitfalls of litigation. Although the Commission is the governing body for charities in England and Wales, many of the principles are as relevant to charities in Scotland.

The overarching message is that litigation should be an absolute last resort for a charity when seeking to resolve a dispute. Emphasis is placed on considering other methods of dispute resolution less costly for a charity and that cost is not merely financial; litigation is time consuming and may subject a charity to reputational damage – all of which must be considered.

Outlined below are a number of key considerations which will assist trustees in both the contemplation/consideration of taking legal action and how they should act when forced to enter into litigation.

Charities’ power to take or defend legal proceedings

Regardless of legal structure, all charities can take legal action. There are subtle differences, however, between charities which are incorporated and those that are not.

Incorporated charities are their own separate legal entities and therefore can enter into and defend legal proceedings in their own right. This also means that generally it is the charity which would be responsible for debts, costs or any other liabilities incurred as a result of the legal proceedings. That being said, if the decision to take legal action was not taken reasonably or a trustee is in breach of duty in considering taking legal action, then personal liability for costs may be incurred.

Where a charity is unincorporated, legal

action must be taken or defended in the names of the charity trustees. Risk of personal liability for trustees of an unincorporated charity is far higher, as trustees may be asked to personally contribute to any costs incurred through the taking of legal action if the charity has insufficient funds to do this itself.

As a trustee, it is important to know the legal structure of your charity so that you are aware of the potential implications on you personally from your charity entering into litigation.

Alternatives to taking legal action

In contemplation of legal action, there is an expectation that a charity and its trustees look into all other reasonable forms of dispute resolution available before raising an action in court. The guidance sets out some of the most common forms of alternative dispute resolution that a charity can utilise:

Negotiation – where both parties will sit down together and attempt to find a suitable resolution to a dispute. Advisers can be appointed to assist.

Mediation – where both parties to a dispute agree to implement a third party who acts as a facilitator between the two. A mediator will look beyond the legal issues between the parties in an attempt to find common ground and a prompt resolution to the dispute. Although mediation may be more expensive than negotiation as a third party has to be appointed, the fact that there is an impartial view on the dispute will give an indication of how it is best resolved and it will almost certainly be more cost-effective than litigation.

Courts encourage parties to resolve disputes as promptly as possible. A court may refuse to consider a dispute where the parties have not made alternative attempts to resolve the issue.

Considerations to be made before litigating

The guidance points out a number of factors that trustees should look into before deciding upon whether to litigate:

Prospects of success – trustees must genuinely believe that entering into a litigation will produce a positive outcome for the charity. Knowingly entering into legal proceedings with little or no prospect of success could be viewed as a trustee not acting in the best interests of the charity.

Financial cost – the first thing that should be asked is whether the charity can afford to pay the legal costs? Even if a positive outcome is achieved in court, it is likely that not all legal costs will be recoverable. The obligation is on the trustees to be constantly aware of the financial health of the charity which puts them in a position to assess whether litigation is financially viable.

Reputational damage – taking someone to court/being taken to court poses a significant risk to a charity’s reputation. Generally speaking, any member of the public can sit in court. This may pose a risk where a case may disclose potentially sensitive or damaging information to the wider public. It is important for trustees to: understand the risks; to have a plan in place that deals with unwanted publicity; and manage the reputation of the charity in the best possible way.

Non-financial considerations – the trustees should consider whether the time and management resources used in dealing with litigation is worth the risk. Litigation may detract management from the day-to-day objectives. If the effects of litigation detract from performing charitable activities then that may lead to further reputational damage and donors withdrawing future funding. **Cont’d...**

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Summary

The Commission's guidance acts as much as a warning for charities about the risks of litigation as it does guide them on it. There is strong emphasis on the need for charities to explore all other forms of dispute resolution available before raising court proceedings. The risks to a charity are clear and extend beyond the obvious financial implications of litigation. Trustees must act responsibly in ensuring that litigation is not detrimental to the long term sustainability of their charities.

Keep up-to-date on future guidance and other changes in the law by signing up to our online updates.

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Scottish Fundraising Implementation Group

Progress and update on the Scottish Fundraising Implementation Group and the Independent Panel:-

Val can confirm that good progress is being made here. Some highlights are as follows:

1. The Complaints Hub was launched on 7 July (and coincided with the launch of the England and Wales Fundraising Regulator). To date the Hub has received 10 matters, with only two fundraising complaints being identified.
2. The Independent Panel is expected to be known as "The Independent Fundraising Standards and Adjudication Panel for Scotland" and shall be incorporated as a company

limited by guarantee with its members drawn from the initial members of the Panel.

3. More details about the Panel Members will be announced soon but the Panel members will be drawn from a wide range of groups and skills in Scotland.
4. Memorandums of Understanding between OSCR and the Panel, and the Fundraising Regulator for England and Wales and the Panel are currently being put in place.
5. The Independent Panel will be officially launched on 8 December 2016.

The Carers (Scotland) Act 2016 – an outline

In February this year, the Carers (Scotland) Bill was passed through the Scottish Parliament. The Bill was discussed throughout 2015 and into 2016 with a variety of stakeholders being given the opportunity to contribute to what the Bill should contain, including a number of charities. The Scottish Government have since announced that the Carers (Scotland) Act 2016 will come into force on 1 April 2018.

The overarching aim of the Act is to 'promote, defend and extend the rights' of adult and young carers across Scotland. The Act identifies the need to support carers and is attempting to do so through the introduction of Adult Carer Support Plans and equivalent Young Carer Statements for carers aged 18 or under.

The 8-part Act contains a number of other new provisions which include the requirement for local authorities to prepare strategies for local carers, information and advice for carers and imposing a duty on local authorities to involve carers in carer services.

Look out for more details of the Carers (Scotland) Act 2016 in our Spring 2017 newsletter where we will be looking into the provisions of the act in greater depth and assessing their impact on the charities sector across Scotland.

For further information on any of the articles in this edition of the Charities & Third Sector Newsletter, please contact [Val Surgenor](#) or [Robin Fallas](#).

Changes and Developments in the Social Enterprise Field



Gerry Higgins



The Scottish Government published “Internationalising Social Enterprise: A Strategy for Scotland” in September of this year. This strategy sets out the Scottish Government’s goals for “international excellence, leadership, and impact in the social enterprise field”. The Scottish Government want to continually grow the domestic presence of Scottish social enterprises, but also seek to enhance Scotland’s presence within the social enterprise field globally. (For the document and more information on “Internationalising Social Enterprise: A Strategy for Scotland” please [click here](#)). This interest in the social enterprise field can also be seen from Scotland’s eagerness in hosting the inaugural Social Enterprise World Forum (SEWF) in 2008. Consequently, Scotland is hoping to welcome the SEWF back in 2018 – marking the 10 year anniversary of the Forum.

A paper was published recently by CEIS, Community Enterprise, Firstport, HISEZ, InspirAlba, Senscot, Social Enterprise Academy, Social Enterprise Scotland and Social Firms Scotland setting out the 10 year strategy for social enterprise within Scotland. This Paper is called “Scotland’s Vision for Social Enterprise 2025 – Moving Social Enterprise in from the Margins to the Mainstream”. This document was prepared with the aim of building agreement within the social enterprise field about the future of the community. The collaborators also hope that the content of the Paper is utilised by the Government when considering guidelines, regulations, and organisation and financing in the area of social enterprise. (For the document and more information on “Scotland’s Vision for Social Enterprise 2025 – Moving Social Enterprise in from the Margins to the Mainstream” Paper please [click here](#)). Following recently published strategies,

Robin Fallas spoke with Gerry Higgins (Chief Executive Officer at Community Enterprise in Scotland (CEIS)) to get his opinion on the social enterprise field within Scotland. Gerry was kind enough to answer some questions on the topic...

Robin: Scotland has established itself as one amongst a number of global leaders in social enterprise, what do you think have been the key factors that have led to this?

Gerry: Our social enterprise sector is diverse and mature after a decade or more of collaboration with Government to address social issues throughout Scotland. The social enterprise ecosystem links the work of individual social enterprises, large and small, rural and urban, with the national economic strategy and the objective of reducing inequality in Scottish society. The investment in the ecosystem has given Scotland its leading position as while other countries have social investment initiatives and social enterprise networks, the Scottish approach is by far the most comprehensive. National policy on procurement reform to open public sector markets to social enterprise, is complemented by business support and social investment initiatives which increase capacity. Awareness raising measures and support for entrepreneurs and social enterprise in schools ensure that new talent is coming to the sector as business leaders and consumers. The ecosystem is well balanced but we are now seeing social enterprise strategy emerging from a co-production process where the sector and government is working in partnership. The draft 10 year Social Enterprise Strategy has taken over a year of collaboration including establishing a vision for social enterprise, agreeing needs and priorities and consulting widely on actions and

solutions. Other countries have elements of this approach but Scotland deserves its leading nation tag, for now.

Robin: You’ve been involved in the international social enterprise scene for some time. Can you think of an approach to nurturing social enterprise in another country that has jumped out at you and made you think “we could benefit from that sort of approach back in Scotland”?

Gerry: Some of our business advisors at CEIS have been involved in delivering training for young social entrepreneurs in Taiwan through a collaboration with the Taiwan Government and Universities. The students who are interested in social enterprise receive business training and guidance on their social enterprise business models and concepts. Many are selected to come to Scotland to see how social enterprises deal with challenges and deliver products and services here. The active engagement of Universities in social enterprise development - with undergraduates in Taiwan - will result in a highly motivated and highly successful cohort of social enterprise leaders inspired to run businesses that address social challenges. In Scotland we do really well in our school engagement and have a good range of post-graduate or leadership options, but we have lots to learn from the Taiwanese approach to undergraduate business students.

Robin: In your view, what is the main thing holding Scottish social enterprises back from internationalising or, if you prefer, what would be your one key area to focus on to support further internationalisation?

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Gerry: The vast majority of social enterprises start off with a mission to address a social issue and they scale their business over time to address that issue through their business solution. The point where these businesses consider that exporting products or services might assist their ability to deliver social outcomes is often random - following a visit from overseas or an inquiry for information or a customer suggestion. Many more commercial sector organisations start off with a plan to be exporting by year 4 or 5 and in some cases they achieve this. Our aim is to encourage many more social enterprises to consider if they would benefit from a larger market or if others could deliver their model overseas. The social enterprise movement worldwide has become better at sharing information and supporting social problems in one region with solutions from another. A great number of social enterprises want to remain local in focus and

delivery, our task is to provide high quality support and open opportunities for those who have the potential to access markets overseas.

Robin: A little closer to home now. There have been some very high profile international people visiting Scottish social enterprises over the last year or so – is this translating into increased interest in and set-up and development of social enterprises?

Gerry: The 2015 Census of Social Enterprise in Scotland is due to be repeated in 2017 – that will tell us if the sector has grown in the last 2 years. There were 5,199 social enterprises identified in 2015 and using the same methodology the next Census will provide the data on total numbers, which geographical and economic sectors are growing or declining, how many people [are] employed, GVA contribution etc. One of the key elements of this is a focus

on pay equality and gender balance as these are issues that attract people to value based employment. We also expect to see that the multiplier between lowest to highest paid within enterprises will remain very modest while use of zero hour's contracts will be very low. In the early years of social enterprise development many of the new businesses were established by existing charities as subsidiaries or by reorganising their business model. However much of the new growth is coming from entrepreneurs, young people looking at alternative routes to business or people switching from the commercial sector to blend business and social. The “celebrity” involvement may well have an impact in piquing interest amongst young people in particular but this brings benefits with more people considering being involved as employees or leaders, but also in raising consumer awareness.

About MacRoberts

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