OSCR
Scottish Charity Regulator

Mr Steven Murray
47 Small Street
Lochgelly
KY5 9AY

Our Ref: MI/INQ/15-2529

31 March 2016

Dear Mr Murray

4 Winds SCIO - Scottish Charity Number SC043913

I refer to our meeting on 16 February. Thank you to all who attended.

I write to inform you that the Office of the Scottish Charity Regulator (OSCR) has concluded its inquiry into 4 Winds SCIO, SC043913 (the charity) and to advise you of our findings.

A copy of this letter is being sent to all of the trustees who attended the meeting because in charity law, all charity trustees are equally accountable for their charity and it is important going forward that all understand their charity trustee duties and the work that needs to be done to improve the charity's governance and to ensure that it is run properly and lawfully.

OSCR's findings are that the charity's governance has been weak, and the charity trustees have not adhered to the terms of their constitution. We explain this in more detail below.

Having weighed up the information obtained during our inquiry we have concluded that on this occasion it is proportionate for us to allow the charity trustees the opportunity of making the necessary improvements. We will not be asking the charity for any further information at this time but we will contact the trustees in six months time for an update on progress. We set out a number of recommendations to improve the governance and accountability of the charity going forward and to equip the charity trustees with the knowledge they need to run the charity competently and lawfully.

This letter will be kept on our records and will be referred to should any further concerns be raised about the charity.

In this letter we deal with the concerns reported and our response to them and not to every point made at the meeting. We do acknowledge the trustees concerns and appreciate that they have had to deal with some adverse publicity which has been unpleasant.

Background

On 7 October 2015 OSCR received a number of concerns about the 4 Winds charity from a member of the public. The concerns were:

- That the charity was not keeping proper minutes of meetings which is in breach of its constitution.
- That the charity was operating while inqorate, i.e. with four trustees instead of five as is required under the terms of the Constitution.
- That the charity had not held an Annual Members Meeting as it is required to do under the terms of its Constitution.
- That Community Councillors membership to the 4 Winds has never been acknowledged as per clauses 5.1.1 and 5.1.2 of the Constitution.
- That the charity had failed to submit accounts to OSCR and the accounts were now well overdue.

Around the same time as these concerns were submitted, OSCR's Contact Team had raised an internal concern about the late submission of accounts and the lack of response from the charity. Our correspondence at that time was with Alexander Cuthbertson who was noted as the charity's principal contact on the application form submitted to us seeking charitable status. We have no record of the charity notifying us that Mr Cuthbertson had resigned his position. Under section 17 of the Charities and Trustee Investment (Scotland) Act 2005 a charity must give OSCR notice of any change in the principal office of the charity and any change in any other details set out in its entry on the Scottish Charity Register. Charity trustees should therefore, regularly check their entry on the Register.

On 30 October we wrote to Steven Murray, as the new principal contact, to notify the trustees that we had received a complaint about the charity and to ask for some initial information. Unfortunately the letter was returned by Royal Mail marked "addressee gone away". This appeared to be a mistake which was rectified when we contacted Mr Murray by email. The information

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we required was provided on 24 November 2015. Shortly after this the officer dealing with this case left OSCR and we apologise that this caused a delay in progressing matters.

Duties of Charity Trustees
Section 66 of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) sets out four general duties that apply to all charity trustees, they are:

- To act in the interests of the charity
- To seek in good faith, to ensure that the charity operates in a manner consistent with its purposes
- To act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person
- To ensure that the charity complies with the provisions of the 2005 Act, and other relevant legislation

Under section 66 of the 2005 Act, any breach of the general duties detailed above is to be treated as misconduct in the administration of the charity. All charity trustees must take such steps as reasonably practicable to ensure that any breach of duty is not repeated and that any trustee that is in serious or repeated breach of their duties is removed as a charity trustee.

Charity trustees are the persons in management and control of the administration of a charity. Charity trustees as a body are collectively or corporately responsible for all the activities of the charity. This means that all charity trustees are equally accountable for their organisation. They have a collective general duty of care for the charity and they must all observe the requirements of the Charities and Trustee Investment (Scotland) Act 2005. Charity trustees are expected to act together as a board or committee to realise the values and purposes of the charity and to comply with legislative and regulatory requirements.

While some charity trustee may have additional responsibilities and tasks because of the 'office' they hold i.e. Chair, Treasurer, Secretary, this does not make them any more or less accountable than the other charity trustees in terms of their charity trustee duties.

Four of those who attended the meeting signed charity trustee Declarations when charity status was sought which made them aware of their charity trustee duties. We are disappointed therefore that they have failed to comply.

Adhering to the charity's governing document
4 Winds is a SCIO – Scottish Charitable Incorporated Organisation. That means that its governing document is its Constitution. When 4 Winds was

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given charitable status it was on the basis that the trustees would adhere to the terms set out in this document. The trustees do not have any powers beyond those specified in the constitution. Failure to comply is a breach of charity trustee duties.

All charity trustees should have a copy of the Constitution and ensure that it is adhered to in all respects.

The Concerns raised:

1. The charity is not keeping proper minutes.
The trustees are in breach of clause 12.6 of the Constitution by not keeping minutes that record all decisions made and the business transacted at each meeting. They are also failing to act with care and diligence by not recording their discussions and decisions.

We discussed the document that the charity provided that was said to be the minutes. We made it clear that this was insufficient to be considered as proper minutes. While it does show the grants approved, the scores awarded and those attending the meeting it does not show other business that the charity trustees should be discussing such as financial reports, actions to appoint new trustees, arrangements for the AMM, the annual returns and accounts submission to OSCR, etc. It would be concerning if these discussions were not taking place.

Clause 13.1 of the constitution provides for the appointment of a Minute Secretary and we recommend that the trustees consider this option or alternatively take action to ensure that a current trustee is provided with the skills required to take minutes. Fife Voluntary Action is likely to be able to provide this training.

We also discussed that there is no legal requirement for the charity to provide its minutes to the general public. However, in a charity such as 4 Winds which is set up for community benefit, the charity trustees may wish to consider the benefits of making its minutes publicly available on its website or through some other channel.

2. Operating while inquorate
Clause 12.1.1. of the Constitution states:
"The quorum for Board meetings shall be not less than 5 Trustees. No business shall be dealt with at a Board Meeting unless a quorum is present"

You confirmed that for some considerable time the charity has been operating with only four trustees.

The terms of the charity's constitution should always be referred to and forms the basis of any decisions or actions which the SCIO may take. If any of the terms are no longer viable or appropriate the trustees must take urgent action to amend the constitution. A decision taken by an inquorate body can in some cases be confirmed or ratified later and where this type of procedure is required it should be added in as an additional clause in the constitution.

We note that an additional trustee has now been appointed and that the charity is taking action to amend the constitution to reduce the number required for a quorum. For this change to be legal the trustees must be able to show that they have followed the process set out in clause 18 of the Constitution.

It would be prudent for the trustees to recruit more trustees than is required for the quorum to allow them to deal with any conflicts of interest that may arise in the decision making process.

Failure to hold an Annual Members Meeting
Clause 6.1 of the Constitution states that the Board will convene an AMM at least once in every fifteen month period. Charitable status was awarded on 5 April 2013 so an AMM should have been held by August 2014. You informed us that the first AMM was held on February 8th 2016. The charity trustees have again therefore failed to comply with the terms of their Constitution.

The charity trustees must ensure that future meetings are held in accordance with clauses 6.1 to 6.9 of the Constitution. Failure to abide by these clauses could invalidate decisions made.

That Community Councillors membership to the 4 Winds has never been acknowledged as per clauses 5.1.1 and 5.1.2 of the Constitution.

Members of a SCIO differ from those of any other Scottish charity in two main ways:

- Membership of a SCIO may not be transferred from one member to another
- Members of SCIOs are also subject to some of the general duties of charity trustees set out at section 66 of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act).

Because members of a SCIO have statutory duties under the 2005 Act, both the SCIO and OSCR must be clear about who the members are at all times. The members themselves must also know that they are members in order to

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fulfil their duties under the 2005 Act; it is therefore not possible for a SCIO to define its membership, for example, as all those dwelling in a particular geographical area or belonging to a section of the community.

Instead a SCIO must maintain an up to date register of its members so that they are clearly identifiable and therefore their decision-making powers can be seen to have been properly exercised.

Members have a key role in agreeing any amendments to the SCIO's constitution. The SCIO may only make amendments if a resolution is passed by its members in the following manner.

- By a two-thirds majority of those members voting at a general meeting of the SCIO, or
- Unanimously by the SCIO's members, otherwise than at a general meeting.

All SCIO's have a duty to keep a register of their charity trustees and a register of members. We recommend therefore that the 4 Winds charity ensure that these registers are in place and are kept up to date. Efforts should therefore be made to improve communication with the local Community Councils whose Councillors are noted as the members in clause 5.1 of the charity's Constitution.

Late submission of accounting records

Section 44 of the 2005 Act requires charities to keep proper accounting records. Section 4 of the Accounting Regulations specifies that the accounting records must be sufficiently detailed to show and explain the transactions of the charity. In particular they must be able to:

- Show, day by day, the money received and spent by the charity
- Record the assets and liabilities of the charity
- Disclose the financial position of the charity at any time
- Produce a statement of account in line with the Regulations.

The charity's accounts year end is 30 April 2014 and we allow charities 9 months from this date to submit their accounts. Our records show that the accounts were still outstanding as of the date of our meeting making them over a year late. This is concerning and is a factor taken into account in reaching the conclusion that governance is weak.
We discussed that the draft accounts prepared by Hugh McCormick & Co (Accountants) and submitted on 10 February do not comply with charity accounts regulations and are therefore unacceptable.

The accounts submitted on 15 March are still not SORP compliant, do not contain a Trustee's Annual Report and have not been signed off by a charity trustee, however, we will accept them this year but advise that we expect them to be fully compliant next year.

Please ensure that the charity completes its online annual return for 30 April 2014 as soon as possible and attaches the annual accounts and reports. This will allow the charity's register entry to be updated.

Conclusions

The breaches of the charity's constitution and failure by the charity trustees to demonstrate their knowledge and understanding of their charity trustee duties and submit accounts on time is concerning. It leads us to conclude that the trustees sought charity status without carrying out appropriate research as to what their legal duties were. The charity trustees have legal responsibilities and must ensure that all reporting requirements are met.

These matters need to be rectified going forward and we therefore **recommend** that all charity trustees attend charity trustee governance training. This can be sourced through various organisations such as Fife Voluntary Action, SCVO, and Edinburgh Voluntary Organisations Council (EVOC). This training should be carried out within the next six months.

At the meeting we distributed some copies of our booklet 'Guidance for Charity Trustees'. Further copies can be downloaded from our website www.oscr.org.uk Please ensure that all trustees have a copy.

We also recommend that the trustees give some thought as to the long term governance of the charity given that they have said that they are experiencing difficulty attracting persons from the Community Councils to become trustees.

Yours sincerely

S.M. Walker

Sharon Walker
Investigations Officer