



OFFICIAL REPORT
AITHISG OIFIGEIL

Social Justice and Social Security Committee

Thursday 2 March 2023

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Thursday 2 March 2023

CONTENTS

Col.

CHARITIES (REGULATION AND ADMINISTRATION) (SCOTLAND) BILL: STAGE 1..... 1

SOCIAL JUSTICE AND SOCIAL SECURITY COMMITTEE
5th Meeting 2023, Session 6

CONVENER

*Natalie Don (Renfrewshire North and West) (SNP)

DEPUTY CONVENER

*Emma Roddick (Highlands and Islands) (SNP)

COMMITTEE MEMBERS

*Jeremy Balfour (Lothian) (Con)
*Miles Briggs (Lothian) (Con)
*Foyso Choudhury (Lothian) (Lab)
James Dornan (Glasgow Cathcart) (SNP)
*Pam Duncan-Glancy (Glasgow) (Lab)
*Paul McLennan (East Lothian) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Vicki Cahill (Alzheimer Scotland)
David Gibson (Methodist Church in Scotland)
Jason Henderson (Scottish Council for Voluntary Organisations)
Steven Inglis (Aberdeen City Council)
Sarah Latto (Volunteer Scotland)
Shona NicIlinein (Bòrd na Gàidhlig)
Rami Okasha (Children's Hospices Across Scotland)
Madelaine Sproule (Church of Scotland)
Evelyn Tweed (Stirling) (SNP) (Committee Substitute)
Mridul Wadhwa (Edinburgh Rape Crisis Centre)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Social Justice and Social Security Committee

Thursday 2 March 2023

[The Convener opened the meeting at 09:00]

Charities (Regulation and Administration) (Scotland) Bill: Stage 1

The Convener (Natalie Don): Good morning, everyone, and welcome to the fifth meeting in 2023 of the Social Justice and Social Security Committee. We have received apologies this morning from James Dornan, and I welcome Evelyn Tweed to the meeting as a committee substitute.

Agenda item 1 is our first evidence session on the Charities (Regulation and Administration) Scotland Bill. The bill was introduced in the Scottish Parliament on 15 November 2022, following two consultation exercises by the Scottish Government in 2019 and 2021. Its aims are to strengthen and update the current legislative framework for charities by increasing their transparency and accountability, to make improvements to the powers of the Office of the Scottish Charity Regulator and to bring Scottish charity legislation up to date with certain key aspects of charity regulation in England, Wales and Northern Ireland.

Yesterday, the committee held an informal engagement session on the bill with a range of individuals from across the third sector as well as those representing accountancy and law firms, and those discussions have provided a useful introduction to today's evidence taking and will help to inform members' scrutiny of the bill. A summary of them will be available on the committee's website shortly.

I welcome our first panel to the meeting. Joining us in the room are Jason Henderson, policy and public affairs officer at the Scottish Council for Voluntary Organisations, and Sarah Latto, policy officer at Volunteer Scotland. We are also joined remotely by David Gibson, the Methodist Church's representative on the Scottish Churches Committee; Steven Inglis, team leader at Aberdeen City Council; and Madelaine Sproule, solicitor for the Church of Scotland. I welcome all of you and thank you for coming along this morning.

Before we begin, I will make a few quick points about the format of the meeting. First, I ask our virtual witnesses to please wait until I—or the member asking the question—say your name before speaking. Moreover, please allow our broadcasting colleagues a few seconds to turn on your microphone before you start to speak. If any of our virtual witnesses wishes to come in on a question, they can indicate as much by putting an R in the dialogue box on BlueJeans or simply by a show of their hand.

Please do not feel that you all have to answer every single question. It is okay if you have nothing to add to what others have said.

As we have a lot to get through this morning, I must ask everyone to keep their questions, answers and any follow-up questions quite tight. Colleagues in the room should indicate to either me or the clerk if they wish to ask a supplementary question, and committee members who are online should use the chat box or WhatsApp.

We will move to our first theme, with questions from Pam Duncan-Glancy.

Pam Duncan-Glancy (Glasgow) (Lab): Good morning, panel. Thank you for the evidence that you have given us in advance and for coming here this morning.

I want to explore a little bit the question of how we have got to this point and the review that, as has been indicated, has been part of the bill's development. The Scottish Government has said that, although it is bringing forward this piece of legislation now, it will carry out a broader review in the future. Have you been involved in the development of the proposals in the current legislation? How would you characterise that involvement?

That question is for Jason Henderson, first of all.

Jason Henderson (Scottish Council for Voluntary Organisations): The SCVO has been heavily involved throughout the process. Indeed, even before my time, it was involved in the original consultation in 2019 as well as in the engagement process in 2021.

The proposals that have been consulted on were developed at the very beginning by OSCR and the Scottish Government without input from the SCVO or the sector, so the process has very much been focused on proposals favoured by the regulator. I think that that speaks to the increasing calls for a wider review, as the process has probably not provided the opportunity to discuss and debate what more could have been done. Some areas of the sector might well believe that an opportunity has been missed, but, that said, we broadly support the bill, its aims and what it intends to do.

As for the proposal for a wider review, the SCVO has been calling for such a review for quite some time now, so we welcome the Scottish Government's commitment in that respect. We would, though, call for the review to be broad. We must remember that the Charities and Trustee Investment (Scotland) Act 2005 is not the only relevant legislation. There are other forms of relevant legislation, and there are regulations, different regulators, duties, obligations and administrative processes, all of which make up the regulatory landscape in which charities and the wider sector operate. We need to keep that in mind, and I hope that the Scottish Government will commit to keeping that in mind as we see progress on that.

The review must be independent. We recognise that there is a wide range of opinion on what the review could involve, but the recommendations that come out of it must be independently set and not crafted by Government—and certainly not by a handful of organisations such as ours.

That is our take on the review and the process to date. The only other thing that I will stress is that it would be good to start calling for timescales for the review from the Scottish Government.

Pam Duncan-Glancy: Thank you. I have a supplementary question, but I will come back to that. Sarah Latto, do you wish to add anything?

Sarah Latto (Volunteer Scotland): Yes. I will add that Volunteer Scotland has not had a policy function until quite recently—when I came into post, in April 2022—so we were not involved in the earlier conversations around the bill. However, the fact that the SCVO, the Association of Chief Officers of Scottish Voluntary Organisations and our third sector interface colleagues were involved meant that the importance of volunteering was reflected.

Having said that, I echo a lot of what Jason Henderson said about the need for a wider review. The bill does not go far enough on trustee diversity and some of the challenges in that regard. Therefore, we welcome that call and we agree that it would be good to know the timescales for the review.

Pam Duncan-Glancy: I appreciate that. Thank you. Is there anyone online who wants to come in?

The Convener: I do not think so, Pam, so carry on.

Pam Duncan-Glancy: What would an independent review look like? What key elements would ensure that it was independent?

Jason Henderson: That should be discussed. Whether it is an independent panel review that takes into account how complex and varied the sector is can be looked at. At this stage, our first

priority is to stress the need for the review to be independent, and then we can have a discussion about what that looks like, specifically.

Pam Duncan-Glancy: On the point about an independent review, you mentioned earlier that the proposals before us are based on OSCR's perceptions. Are the proposals skewed in that direction?

Jason Henderson: We broadly support the proposals, which do not contain anything that we vehemently disagree with or think should not be included. Some of the detail and information in the proposals is perhaps skewed in the regulator's direction, by which I mean that there is not a great deal of information for the sector to grapple with in order to understand how it will work. Therefore, it is maybe not skewed in terms of the proposals themselves.

We completely understand that this particular bill seeks to give the regulator improvements and modifications that will allow it to regulate better, so we understand that the regulator must be at the heart of it. However, with regard to information on how it will be implemented, there are still a lot of questions in the sector, which might be because the bill has been approached without the need for that having been taken into consideration as much as it could have been.

Pam Duncan-Glancy: Sarah Latto, I think that you said that there are aspects missing from the bill.

Sarah Latto: It is not so much that aspects are missing but that we feel that it could have gone further. There is a real challenge around trustee diversity. We acknowledge the dispensation scheme, which would allow trustees to have their names removed from the record or not added to the record in case of safety concerns. There is also a waiver scheme for people who want to be trustees who would otherwise be disqualified, but the information around the waiver scheme is very light—we do not know how it would look—and we feel that the default disqualification would create issues for a lot of people from more marginalised groups.

Therefore, it is not so much that the bill is missing anything per se—I agree with Jason that it does not contain anything that we vehemently disagree with—as that it is quite light on detail.

I know that colleagues in the room from the faith community have acknowledged in their responses the fact that trustees are volunteers and their time to be trustees is limited, so we need to make sure that the administrative burden is not increased as a result of the bill. I do not think that the information is readily available yet to understand whether there would be an administrative burden for volunteers.

Pam Duncan-Giancy: I appreciate that. Colleagues will possibly press some questions in that particular area later. I have nothing further to ask at this point.

The Convener: We will move on to theme 2 and questions from Paul McLennan.

Paul McLennan (East Lothian) (SNP): Good morning, panel. My first question was going to be about the general principles of the bill and whether existing charity law needs to be updated, but I am hearing from the panel that it does.

I want to move on and look at transparency and accountability in the sector. As the convener said, that issue came through quite strongly at our event yesterday. Do you have any views or thoughts on that? I ask Jason Henderson to answer first.

Jason Henderson: The SCVO absolutely supports the need for transparency and accountability. We are pro-regulation where it is needed, so we absolutely support transparency and accountability. We support the aims and objectives of the bill and, more to the point, although we have concerns about communication and how the bill will be implemented, the aims of increasing transparency and accountability are met by a number of the proposals in the bill. In terms of the aims that we all are striving for with the bill, we absolutely agree with the need to go ahead with that work. We see the bill as working towards that.

Sarah Latto: I would say the same, to be honest. The bill addresses the fact that there have been concerns about transparency and accountability in charities for a while now. It addresses transparency and accountability without being too onerous, so there is a good balance in the bill in addressing those concerns.

Paul McLennan: Are there any specific issues around transparency and accountability that you want to mention?

Sarah Latto: From a volunteer perspective, it is important to recognise that the ultimate governance of a charity lies with the trustees. They are accountable for what happens in charities, so ensuring that who leads charities is much clearer and that that information is publicly available in the vast majority of cases will increase transparency and accountability.

Paul McLennan: Does David Gibson want to come in from a faith point of view? Something that was raised yesterday was the names of trustees appearing more openly. Do you have any thoughts on that issue?

David Gibson (Methodist Church in Scotland): [*Inaudible.*]
—church council of each church, and they are automatically the trustees for the local church property. We understand the

necessity for trustees to be transparent and for it to be understood who the trustees are, so we are quite comfortable with the proposals that have been made on the transparency and accountability of the details and names of trustees that would be entered. We are broadly for the proposals.

Madelaine Sproule (Church of Scotland): Local trustees have raised general concerns about people not liking their personal information being shared, but it is good to see that it will be only names that are identifiable from the public register and not people's more personal data. We broadly support the fact that the bill will make charities in general more transparent and accountable.

Paul McLennan: I want to move on to your views on the role of OSCR. I have a couple of questions on that. Are the proposed extensions to OSCR's powers appropriate and proportionate? Does it operate effectively at the moment? One of the key things that came through in yesterday's discussion was the capacity that OSCR would need in order to take on additional powers.

Steven Inglis, I ask you first to say what your thoughts are in that regard, and I will then open it up to the other witnesses.

09:15

Steven Inglis (Aberdeen City Council): The council's main interest in that is in terms of those charitable trusts where there is a mix of councillor trustees and trustees who are not councillors, and we provide administrative support to those trusts. It is appreciated that the aim of the bill is a proportionate regime that will be effective. Our point is around whether it could perhaps be made a bit more proportionate with regard to very small charitable trusts.

With regard to OSCR's powers and the new provisions, the one that jumps out to us is the requirement to provide on-going notification throughout the year of changes of information to OSCR, which would appear in the schedule that it keeps but would not be public. From our perspective, it is about the extra administrative work that would be required in that regard and whether the provisions could be made more proportionate by having some kind of financial threshold in place.

Paul McLennan: Sarah, the same questions go to you. Does OSCR operate effectively? Are the new powers proportionate?

Sarah Latto: I think that you are right to pick up on the fact that an increase in capacity will be required to do some of what is being proposed. One thing in particular that we have some questions around is the fact that the appointment of interim charity trustees will fall to OSCR. We

have some questions about what the process would be for that, because that is quite a significant undertaking, especially in the current climate, where trustees are a bit like gold dust. Recruiting trustees can be a challenge for organisations, so how would OSCR propose to do that and what capacity would be required? That is just one example where I think that the bill is still a bit light on the detail about how OSCR would actually undertake some of the duties that are proposed.

Jason Henderson: I absolutely echo Sarah's points around that particular aspect of the bill. There are still a lot of gaps that need to be filled in with detail, so we do not know what kind of approach would be taken in order to recruit an interim trustee. In OSCR's Scottish charity and public survey last year, 25 per cent of charities in Scotland said that recruiting trustees is a difficulty. If a quarter of around 25,000 charities in Scotland are finding a difficulty with recruiting trustees, in the search for transparency and accountability, we need to make sure that we are not compounding some of the struggles that charities are already facing.

Another part of the bill, which obviously gives OSCR a little more power, is the power to issue positive directions. We understand and support in principle that part of the bill but, again, there is that lack of detail. The policy memorandum states that the list of the situations in which a positive direction could be used "cannot be exhaustively defined", but I think that the sector will still need some sort of idea as to when the positive directions could be used and in what circumstances. Again, there is a lack of communication. If we do not get that detail through this process—at least post-legislation—that draws into the question the size of the burden on OSCR. It is not just about the burden of administration and the ability to deal with the administrative burden that the additional powers would give; it is also about the quite extensive engagement that will be required after the changes. It is not just about putting comms out on the website; it is about providing proper guidance and support, making sure that people the length and breadth of the sector are aware of those changes and ensuring that the charities know the expectations that fall on them, know about the dispensation mechanisms that are available to them and know how those work. Therefore, it is about not only the administrative burden, but the burden that will come with the sheer amount of comms that we would expect from the regulator after the changes.

Paul McLennan: I suppose that communications issues are vital, particularly when it comes to the smaller charities.

Moving on from that, I have a question that is probably for Madelaine Sproule. Obviously, the Church of Scotland is going through church closures and mergers and so on. One of the issues that was raised yesterday was about what mergers, for example, would look like when it came to trustees and whatever.

You have had the experience, possibly, of what the church is going through at the moment. I do not know whether you have any thoughts at this stage on the role of OSCR or on whether its powers are proportionate.

Madelaine Sproule: As you said, the church is going through a huge adjustment process at the moment, with lots of congregations forming unions to try to reduce the number of ministers. However, since the 2005 act came into force, the Church of Scotland has had a lot of dialogue with OSCR about how unions of congregations within the Church of Scotland would be treated. In church law and charity law, if two or three congregations unite, although only one charity will remain on the register, the congregations subsist within that union, so we have never had a problem with losing out on legacies in those circumstances. That is not a problem that we had identified as needing to be resolved on behalf of the Church of Scotland.

We think that the bill is proper and proportionate. The only thing that we have tried to draw attention to is that there has not been joined-up thinking on the dual reporting that charities that are not registered as Scottish charitable incorporated organisations will be subject to when it comes to, first, having to put all the information into the charity register and, secondly, also having to submit that information to the register of persons holding a controlled interest in land.

Paul McLennan: Thanks for that, Madelaine. I do not know whether anybody else wants to come in. If not, that is me, convener.

The Convener: In the interests of time—sorry, Paul—we need to move on to the next theme, which is information about charity trustees.

Evelyn Tweed (Stirling) (SNP): Good morning. People with lived experience are an asset to boards and voluntary organisations. Do you anticipate that having their details published or having to ask for a waiver may put them off?

Sarah Latto: In short, yes, that would be a significant barrier. I should caveat that by saying that we welcome the dispensation scheme, which goes some way to reassuring those potential charity trustees with lived experience who might experience some concerns about becoming a trustee if doing so meant that their personal details would be made public. However, we still feel that the process is quite onerous and not particularly transparent. There is not an awful lot of detail yet

about the dispensation but, certainly, the criteria for the existing scheme for waiving disqualification are not particularly transparent. From that perspective, we have concerns.

Just to give you a bit of an idea, we do not have a lot of information about the makeup of charity trustees in Scotland but, from the Charity Commission in England and Wales, we know that 75 per cent of charity trustees have an income that is above the median, 51 per cent are retired and 92 per cent are white—so, almost certainly, there is a real challenge when it comes to trustee diversity. Ideally, we want the trustees of the charities that are working for us to reflect the communities that they serve. That will be particularly challenging, given some of the existing barriers.

It is difficult, because the accountability that is required—in recognition of the fact that being a charity trustee is a significant responsibility—has to be balanced with making it as easy as possible for people from currently underrepresented groups to get involved, if they can.

The Convener: I see that David Gibson, who is online, would like to come in.

David Gibson: It is one thing to give the names of trustees; it is quite a different thing to give their private addresses. I am very pleased that the policy that seems to have been adopted is not to have private addresses publicly shown on a public register.

Taking up a point that Madelaine Sproule made, we feel absolute horror, to be honest, about the idea that the names and addresses of private individuals—normal members of our church councils, who will automatically be our trustees—are going to be on a public register under the RCI regulations. That is completely disproportionate, and it runs counter to what has just been spoken about in the presentation of the bill. I think that is really dangerous, and I do not understand how that got through when the RCI regulations were before the Parliament. It is quite inappropriate for the addresses of trustees, who are private individuals, to be put into a public space.

It is not as if our church hides behind anything. If anybody wants to know about a church property, plenty of information is available regarding who to speak to about anything to do with it, but it is quite inappropriate for private details and personal addresses of trustees to be put into the public domain.

The exemption that has been applied to SCIOs should also be applied to all charities because, as a result of the changes that you are proposing, all charities will be in exactly the same position as SCIOs, so there is no logic for not extending the

exemption that currently exists for SCIOs to all charities.

Evelyn Tweed: There seems to be a concern about diversity in the proposals and how we ensure that diversity is incoming, with fresh blood. How can the proposals be strengthened to ensure that diversity is paramount?

Jason Henderson: That touches, first, on the communication around this. On Sarah Latto's earlier point, if we accept that there are dispensation mechanisms and that there are processes for waivers of disqualification and so on, we first need to ensure that they are proportionate and are not putting off individuals who may be from marginalised areas of the community or from different backgrounds. We need to get the mechanisms right, and we need to ensure that the decision making is correct, so that those points are borne in mind when decisions are made.

It is a question of optics and communication. We are potentially talking about some very small charities, with a handful of volunteers. They need to know that the dispensation mechanism is not going to be intrusive or complex, for example. They need to know that the processes are going to reach the correct decision, so anybody from any background or from a marginalised community needs to know that, when they put themselves forward to become a trustee or anything else for a charity, they are not going to face some sort of uphill battle or be discriminated against.

It is a matter of getting the mechanisms in the bill correct, and it is then about ensuring that people understand that they are correct, that they are worthwhile and that they are not intrusive, that the procedure is fairly straightforward and that the correct decisions will be made at the end of it.

The Convener: We will now move on to questions from Foyso Choudhury, who is joining us online.

Foyso Choudhury (Lothian) (Lab): Good morning. I have a small question. Do you believe that third sector organisations or ethnic minority organisations were involved during the consultation period? That is a general question for whoever wants to pick it up.

Convener, my colleagues have already asked the other question that I wanted to ask, and I have got the answer.

The Convener: Is there a specific person you would like to direct your question to?

Foyso Choudhury: Not really. Anyone can answer. My question is a general one. I just want to know whether third sector organisations and smaller organisations were consulted.

The Convener: Let us hear from Sarah Latto first. If anyone else wishes to come in, please let me know.

09:30

Sarah Latto: I was not involved in the process, but it was good that it involved such a range of organisations—and quite a number of intermediaries, which Jason Henderson will probably touch on better than I will. The fact that ACOSVO was involved is reassuring because it has a network for trustees, so the process recognised that trustees are involved.

When I was reading about who was engaged in the process, I was struck by the relatively small number of organisations that were consulted during consultation events and the fact that only 12 TSIs out of a possible 32 were consulted. Therefore, it could have gone further, but we are fairly satisfied that a range of voluntary organisations were involved.

On your point about faith communities and minority ethnic communities, given the particular challenges that they might experience as a result of the bill, some further consultation with those groups might have been good.

The Convener: Foysol, do you want to bring anyone else in or are you content with that?

Foysol Choudhury: I am content with that answer, but it is a concern because, from what quite a few colleagues are saying, the majority of organisations found that the consultation was not balanced. That is why I think that the consultation should have been wider.

The Convener: Thanks. Do witnesses have any concerns around the proposal to publish unredacted accounts for all charities regardless of size? Do you feel that the publication of accounts for all charities will enhance transparency and accountability in the charity sector? That question is for Jason Henderson first, and, if anyone who is online wants to come in after that, please let me know.

Jason Henderson: I do not want to sound like a broken record, but, for us, this focuses primarily on the processes around dispensation mechanisms and so on. We would support the publishing of the accounts themselves, and we see that as an important part of the bill with regard to achieving the aims of increasing transparency and accountability. However, again, information could be redacted or removed, provided that the sector was confident that the dispensation mechanisms and so on to reach that decision were in place, and those mechanisms will therefore play an important role. That underpins most of the bill. There are proposals that will achieve the

objectives, but, in order to keep the sector confident and secure, so that they can feel assured about the bill, the dispensation mechanisms are really important, and this is another example of that.

Therefore, we have no great concerns overall about the part of the bill that relates to publishing accounts. We support that and we think that it will increase transparency and accountability. However, again, it is about getting it right and ensuring that the processes are there and that dispensation is awarded where it is needed.

The Convener: Thank you, Jason. Do witnesses agree that removing charitable status from organisations that fail to submit accounts is an appropriate measure? Mixed views on that were expressed in the informal meeting yesterday for a variety of reasons. I will bring David Gibson in on that question.

David Gibson: We would broadly support that measure, but I would make a plea with regard to, for example, parent charities. For example, all our church councils are individual charities, and the Methodist Church is the parent charity. Therefore, if a particular church was not doing what it should be doing, if notice could be given to the parent charity at the same time as the notice was given to the individual charity, the centre would understand that there was an issue, which it might not have been aware of, and could seek to address it.

The Convener: Thanks, David. That is very helpful.

As no one else wishes to come in on those points, I will move to our next theme. Our deputy convener, Emma Roddick, has the next questions.

Emma Roddick (Highlands and Islands) (SNP): Thank you, convener. Good morning, everyone. I will direct this question to Sarah Latto, because I know that Volunteer Scotland has talked about this issue in the past. Do you agree that it is sensible to have the same disqualification criteria here as in the rest of the UK?

Sarah Latto: I do not think that we should have the same disqualification criteria as in the rest of the UK just for the sake of being the same. If anything, we have an opportunity for legislation in Scotland to go further. I do not know whether the bill is the right place to do that; it might be better to do it as part of a wider review of charity law.

We feel that the criteria for automatic disqualification might be a bit too punitive, particularly around bankruptcy. In some ways, it is almost like it is criminalising poverty, particularly given where we are at the moment because of the cost of living crisis. I have some figures on that, from the Joseph Rowntree Foundation. At the moment, in Scotland, we have 160,000

households with debt that is five times their monthly income, so, recognising how widespread debt is and the fact that going down the route of bankruptcy is sometimes the only option for a lot of people who experience poverty—it is worth recognising that lower-income households are far more likely to be in debt—it feels unfair that that would be an automatic barrier to people becoming a trustee, particularly given the number of charities in Scotland that are supporting people who are experiencing poverty. There is a direct challenge if we want to have trustees who have lived experience when poverty is one of the key focuses.

With that in mind, I feel that there is no need for us to be in line with the rest of the UK. We could go further and have a much more inclusive approach to disqualification.

Emma Roddick: I am glad to hear the reference to lived experience, because I was going to ask if there are sectors where recruiting for people with lived experience would be made more difficult by the extension of the disqualification criteria. Do you think that there will be challenges with recruitment because of the proposal to extend the disqualification to senior management positions?

Sarah Latto: Potentially. I am from Volunteer Scotland, so I am thinking about trustees. However, speaking from experience, there are increasing moves in the voluntary sector to have all positions in organisations be more representative and reflective of communities. In the same way as disqualification might be a barrier for trustees, it could be a barrier for people who want to move into senior positions in organisations.

Emma Roddick: Finally, do you think that it is appropriate for OSCR to maintain a publicly searchable record of trustees who have been disqualified?

Sarah Latto: That is a good question. I understand why that would exist, because of the aims around transparency and accountability, and it almost needs to exist because of the requirements around disqualification, so it is a bit of a double-edged sword. If we challenge the criteria around disqualification, I do not know whether having a publicly searchable record would necessarily be required any more. However, in order to support the existing legislation, I think that it is important that the record exists in order to reduce the administrative burden and ensure that organisations do not struggle to recruit trustees because they cannot find information about whether someone would actually be able to be a trustee. I hope that that made sense.

The Convener: We have a supplementary from Pam Duncan-Glancy.

Pam Duncan-Glancy: On the previous point, is there a mechanism somewhere in the middle that could be used so that, when people were disqualified, the world and their granny could not find the record of it but the burden on charities when they had to find such information would be reduced? Could there be a register that charities could contact OSCR about that, ultimately, could tell them whether a person appeared on it?

My second point relates to disqualification. I, too, was concerned about that, particularly given the impact that some charities can have on people who want to rebuild their life, part of which can be becoming a trustee. What would a compromise, waived position look like? We probably accept that there need to be checks and balances in those areas. What would an easy waiver look like?

Sarah Latto: The fact that there is automatic disqualification means that the default would be to say no to anyone making an application. Maybe it could be more of an “if” part of an application process. I am not sure, to be honest. Maybe we could have something whereby people could become a trustee in a particular area, recognising that boards have different positions. Having that as a disqualification for the post of treasurer, for example, might be an obvious first step.

I would like to take more time to have a bit of a think about that. It is not something on which I have any particular answers right now. The current situation maybe goes too far in the wrong direction.

Jason Henderson: We agree with Sarah Latto's points. This is about the idea of there being a default no. If we are talking about someone seeking to rebuild their life, again, it comes back to the optics of it. If a person is automatically disqualified, it can give the impression that they face an uphill battle to prove that they are worthy of being a trustee.

As much as we are in a similar position in that we do not have an instant answer on what that process would look like, you would have to have something that did not put people off from the very beginning. It would be very easy for a person to entertain the idea of becoming a trustee, find out that they are automatically disqualified because of something that occurred in their background and decide that it is simply not worth the hassle. We really need to avoid that happening.

Miles Briggs (Lothian) (Con): Good morning. Thank you for joining us today. I will ask a number of questions related to inquiries that OSCR can make. Should the powers be extended to allow OSCR to undertake inquiries into former charities and their trustees?

I will bring in Sarah Latto, first, and then anyone online who wishes to come in.

Sarah Latto: I do not think that there are necessarily any concerns around that. In terms of such accountability, if we think about child safeguarding as an example, what immediately springs to mind is an inquiry that happens further down the line and a need to look at an organisation that no longer exists. It makes sense to be able to see who was responsible for that charity, historically. From that perspective, I do not think that there is a challenge, but the same dispensation would obviously need to be in place for those individuals where there could be a safety concern.

Miles Briggs: As nobody else wants to add to that, I will move on to my other question on that theme. Should OSCR be able to issue positive directions following its inquiry work? Is it appropriate for designated religious charities to be exempt from the provisions?

I will bring in Madelaine Sproule on that point and then anyone else who wants to add anything.

Madelaine Sproule: Our position is that it is appropriate for DRCs to be exempt from those provisions.

We feel—and OSCR is satisfied—that our internal structures are such that we have in place appropriate supervisory measures and an acceptable degree of self-regulation and disciplinary procedures.

We also feel that we are better placed to act in a disciplinary function. In terms of our church acts, we probably have more powers than OSCR. We can therefore take disciplinary action against trustees in those circumstances in which we feel that it is required.

It must also be acknowledged that the legitimate autonomy of the church has been recognised in matters of worship, doctrine, government and discipline. That important point must be made.

Miles Briggs: Thank you, Madelaine.

Do you want to comment on that point, too, David?

09:45

David Gibson: The Methodist Church in Scotland is not a designated religious charity, but, much like the Church of Scotland, we have our own legislation, acts of Parliament and subordinate legislation that govern our discipline and procedures, so we have a very robust system in place.

If there is an issue that OSCR wishes to take up with a charity that might lead in a positive

direction, the parent charity should be advised. If the parent charity—the Methodist Church in Scotland—is advised, quite frankly, the star chamber will get active.

Miles Briggs: Thank you, David.

As no one has any further points to make on that, I will move on to the issue of connection to Scotland, which has emerged and which has been introduced as a requirement in the bill. Should charities have to demonstrate a connection to Scotland? Is that an appropriate measure?

Jason Henderson: The SCVO's position has, from the beginning, been consistently in support of that provision in the bill. We understand the reasoning behind it and we are entirely supportive of it.

That is one area on which clarification has been provided, and the provision has been slightly reframed, taking on board some of the consultation feedback. The original consultation showed, particularly in 2019, that a great deal of clarity was missing about what was meant by “a connection to Scotland”. The bill provides that clarity by reframing the issue so that the provision is about which charities it is not appropriate for OSCR to regulate rather than the ones that it should regulate. We support that provision and we do not have any great issues with it at this stage.

Miles Briggs: That is helpful. Thank you.

As no one has anything contrary to that that they want to add, I will move on to my final questions, on powers to appoint interim trustees in specific circumstances where there are no trustees. We have touched on that already. How, in practice, could that work? You have already said that it is sometimes difficult enough to find people, but how, in practice, might those powers present challenges as to who the interim trustees would be?

Sarah Latto: The obvious challenge relates to how difficult it is to recruit trustees. If we consider the diversity of our charitable sector in Scotland, and the size and scale of the organisations, trustees are normally appointed by the organisation or representatives in it who have an understanding of the needs and the clientele of the charity. I am a bit confused about how OSCR would be able to appoint people with local knowledge and knowledge of the client group. That would be quite a challenge.

That is an issue on which there is not a huge amount of information at present, and it is definitely one on which we have some concern.

Miles Briggs: Does anyone else have anything that they wish to add?

Jason Henderson: I again highlight the point that the bill is underpinned with safeguards. It is notable that that area does not have a safeguard in place. What would that look like? I am not sure. It might be a mechanism that would allow charities to ask for a review.

Miles Briggs: It is a question of whether the mechanism is an emergency measure more than anything. We will look into that further, I hope.

I turn now to a finance question on the merging of charities. I declare an interest in that I chair the Heart of Scotland appeal. Do the provisions make it easier for legacy charities and resources to be transferred in such situations? You might wish to add something about cases in which a charity has merged with another organisation or has changed its name, for instance.

Jason Henderson: The SCVO's position is to support that proposal. From what we have heard from some of the organisations that we have spoken to in the build-up to this meeting, there is widespread support for it. We are quite content with that part of the bill.

Miles Briggs: Good. Those are all my questions.

The Convener: Lastly, we move to questions from Jeremy Balfour.

Jeremy Balfour (Lothian) (Con): Good morning. For the record, I declare that I am a member of the Church of Scotland and a trustee of a number of charities of various sizes.

I go back to Jason Henderson. I am not that clever, so I am sure that you will be able to help me here. I do not understand what "a connection to Scotland" means legally. Can you help me out? You said that that is a good thing. I understand that, but what is the legal definition of that?

Jason Henderson: I am not a lawyer, so I cannot go into the legal detail. With regard to regulation by OSCR, there are specific points that we can look to. The bill contains specific aspects that the regulator would look at with regard to that connection. We are content that, given the aspects that are set out in the bill, it will not exclude, for example, charities that are cross-border charities, and we do not think that it will exclude, for example, charities that are based in Scotland but work for the benefit of communities outwith Scotland. The bill clarifies what that connection would look like.

As I said earlier, that aspect has been reframed in quite a good way, so that it is more about identifying the small number of charities that OSCR should perhaps not be regulating rather than seeking to deprive any organisations of regulation.

Jeremy Balfour: So, you are happy with the definition. You think that there is enough there.

Jason Henderson: At this stage, yes. That aspect could be looked at in the future if there was to be post-legislative scrutiny. However, on the basis of what is in the bill, we would be okay with it.

Jeremy Balfour: I have two final questions. First, are you concerned that there will be additional costs for charities because of these regulations? I am thinking, in particular, of smaller charities that do not have full-time staff and whether the process will be more expensive and time consuming for them. Perhaps Jason Henderson can start again.

Jason Henderson: That touches on the earlier points about the lack of concrete detail around implementation. There is certainly the potential for that to happen. With much of the process, we do not know whether there will be digital solutions. There is so much of the process itself that we do not know about. However, there is certainly the potential for additional costs and an additional administrative burden, and that could have a disproportionate impact on smaller charities. That is where the comms, the processes and the detail come in.

Jeremy Balfour: Perhaps I can bring in Steven Inglis, because the issue will affect local authorities, too. Are you concerned about extra costs that you might face?

Steven Inglis: Yes. I come back to what I said earlier about the requirement to keep OSCR up to date on changes to the details that are kept in its schedule. I suppose that a lot would depend on the questions that OSCR is going to publish, which will indicate what information it will want to hold. It is clear, however, that charities would have to keep on top of that task throughout the year, so there would inevitably be extra administration involved.

I mentioned earlier the possibility of having a financial threshold for smaller charities—if a charity fell below that threshold, it would not be required to provide all those details for OSCR's schedule on an on-going basis. The issue is to do with the on-going administration throughout the year, which might not be a proportionate measure for a small charity with a small annual income.

Jeremy Balfour: I go back to Sarah Latto and Jason Henderson, because they deal with smaller charities. Should there be, as Steven Inglis has suggested, a financial target so that, if a charity does not have X amount of expenditure or turnover a year, it will have to do less than, say, the National Trust for Scotland or the Church of Scotland will have to do?

Sarah Latto: That is certainly a possibility. I am thinking about the range of charities that exist. In addition to the big ones that you mentioned, there are small town hall committees, which might have less than £1,000 in the bank.

That is a possibility, but I very much agree with what Jason Henderson has said. We do not yet know what the financial burden or the administrative burden is likely to be, because we do not have clarity on the process. It is difficult to make a definitive statement on that without knowing the detail.

Jeremy Balfour: My final question is a throwaway one, but it might be quite an important one. If you could add one thing to the bill that is not in it, what would that be? If you do not want to answer that now, maybe you could write to us. I appreciate that I am asking you to think about that off the top of your head.

We have talked about what is in the bill. I think that we are all pretty comfortable with what is in there, provided that some modifications to it are made, but is there anything that you can think of that would, if only it were included in the bill, make the life of a volunteer or a trustee easier?

Sarah Latto: If there was something that I would like to be included in the bill, it would be about the waiver around disqualification. For me, automatic disqualification is the biggest potential barrier to diversity on boards, so I think that it should be removed. I am not necessarily suggesting that that needs to be dealt with in the bill, but, in my view, it is the biggest issue that needs to be dealt with in a future review of charity legislation.

Jeremy Balfour: After we have heard from Jason Henderson, I will go to our online witnesses to find out what their thoughts are.

Jason Henderson: At the risk of sounding as though I am stealing Sarah Latto's answer, my answer is similar to hers. The part of the bill on disqualification jumped out at us and the people we spoke to. It is really important that we get that aspect right, and we would welcome an assurance that the provisions on disqualification will be adequate. That is certainly an area of the bill that we would change.

Jeremy Balfour: Is there anything that our online witnesses would love to see in the bill?

The Convener: I will bring Madelaine Sproule in first.

Madelaine Sproule: We are disappointed that the bill does not extend to allowing OSCR to approve reorganisation of charities that have been established under royal charter, warrant or enactment. That means that they will have to go to the Court of Session to make changes, which is a

very cumbersome, time-consuming and expensive process.

The Convener: As no one else would like to comment, I thank our witnesses very much for coming along to give evidence.

I suspend the meeting briefly to allow for a changeover of witnesses.

09:57

Meeting suspended.

10:00

On resuming—

The Convener: Welcome back, everyone. I welcome our second panel: Vicki Cahill, policy officer at Alzheimer Scotland; Mridul Wadhwa, the chief executive of Edinburgh Rape Crisis Centre; and Rami Okasha, the chief executive of Children's Hospices Across Scotland, who all join us in person. We also have Shona Nicllinein, the chief executive of Bòrd na Gàidhlig, who joins us remotely.

As with the first panel, I have a few points to mention about the format of the meeting. I apologise in advance for this. Please wait until I—or the member who is asking the question—say your name before speaking. Please allow our broadcasting colleagues just a few seconds to turn your microphone on before you begin to speak. You can indicate with an R in the dialogue box in BlueJeans or simply with a show of your hand if you wish to come in on a question. Please do not feel that you all have to answer every question—if you have nothing to add to what others have said, that is absolutely fine.

Before we begin, I put on record that Bòrd na Gàidhlig requested to give evidence in Gaelic this morning. The clerks have spoken with colleagues across the Parliament with a view to facilitating interpretation of this evidence session, but we have been informed that that is not possible due to various factors. The Parliament is aware that there is an issue and is acting to resolve it as new broadcasting systems come into operation. We are truly sorry for not being able to facilitate interpretation at our meeting on this occasion and recognise that that is an unfortunate situation.

I now pass over to our deputy convener, Emma Roddick, who will, in Gaelic, invite Bòrd na Gàidhlig to give a short introduction to its evidence in Gaelic. Afterwards, an interpretation in English will be provided before we hear from other witnesses.

Emma Roddick: Mòran taing, Natalie—agus taing dhan a h-uile neach finais a tha a' gabhail pàirt san t-seisean an-diugh. Tha mi a-nis a' toirt

cuireadh do Bhòrd na Gàidhlig ro-ràdh goirid a thoirt seachad mus tòisich sinn.

Shona NicIlinein (Bòrd na Gàidhlig): Tapadh leibh. Madainn mhath a chathraiche agus buill na comataidh. 'S e urram a th' ann dhomhsa fianais a thoirt seachad às leth coimhearsnachd na Gàidhlig an-diugh is bu mhath leam taing a thoirt dhan chomataidh airson a' chothrom seo.

Tha e soilleir gu bheil a' mhòr-chuid de dhaoine ann an Alba taiceil dhan Ghàidhlig agus gu bheil fàs ann an ionnsachadh na Gàidhlig an dà chuid ann an sgoiltean agus am measg inbich.

Ann an leasachadh na Gàidhlig, tha tòrr air a dhèanamh le buidhnean saor-thoileach a tha clàraichte mar charthannasan. Mar sin, tha ùidh aig Bòrd na Gàidhlig anns a' bhile seo leis gu bheil sinn ag obair gu tric leis na buidhnean sin.

Tha mi cinnteach gun d' fhuair a' chomataidh cothrom a dh'ionnsachadh mu dheidhinn charthannasan a tha ag obair sa Ghàidhlig nuair a thadhail na buill air Uibhist bho chionn beagan sheachdainean ann an co-theacsa eadar-dhealaichte.

Shona NicIlinein continued in English.

Good morning, convener and members of the committee. It is an honour for me to give evidence to the committee today on behalf of Bòrd na Gàidhlig and on behalf of Gaelic speakers. I welcome the committee's recognition of the importance of Gaelic in Scotland. Members may be aware that it is increasingly clear from the Scottish social attitudes survey and other sources that the majority of people in Scotland are supportive of Gaelic and that there is a significant growth in learning Gaelic, both in formal education and among adults. Since 2019, some 1.5 million people have engaged with learning Gaelic through Duolingo, and about 400,000 are currently learning through SpeakGaelic.

Bòrd na Gàidhlig's role is to promote and support the development of the Gaelic language through developing a national Gaelic language plan, working with public authorities and in partnership with a wide range of community organisations. The latter are particularly important for increasing opportunities for using Gaelic in social, sporting and cultural activities.

We recognise that, for Gaelic, a significant amount of development work is delivered by volunteer groups that are registered charities, and Bòrd na Gàidhlig's work includes distributing funds to those organisations to support their development. Therefore, our role reflects the key role of charities as delivery partners.

Since 2018-19, we have awarded 522 grants to 181 different charities. That is almost half of the total number of grants that we awarded. The value

of our grants to charities during that time was almost £13 million, which is more than two thirds of the value of all the grants that we awarded.

With regard to the information that is to be included in the Scottish charity register, it would be useful in raising awareness of Gaelic and organisations that undertake Gaelic activities if the Gaelic name of an organisation could be recorded as well as the English name. It would also raise the profile of those organisations and raise awareness of the work that they do.

We submitted more information in our response to the consultation, and I am happy to provide that as we go through the meeting.

Moran taing.

The Convener: Thank you, Shona. We move to questions from members. Pam Duncan-Glancy will start us off.

Pam Duncan-Glancy: Good morning, and thanks for the evidence that you submitted in advance and for answering our questions today. My question is similar to what witnesses who were in the room earlier would have heard me ask. I am keen to understand a bit about the consultation process that led to the bill that is in front of us and how you would characterise your involvement in that. I will start with Rami Okasha, if that is okay.

Rami Okasha (Children's Hospices Across Scotland): We have not been particularly aware of or involved in the consultation process. That said, it happened during lockdown, and I would characterise these proposals as relatively minor. Therefore, it would have been good to be more involved, but I recognise that the circumstances were as they were. If there was to be wider reform of charity law, as a charity, we would want to be more closely involved at an earlier stage.

Pam Duncan-Glancy: Do any of the other witnesses want to come in on that?

Vicki Cahill (Alzheimer Scotland): Alzheimer Scotland was initially involved in the consultation process back in 2019, but the timing of the second part of the consultation coincided with the pandemic and, as an organisation, we had to refocus and redirect our resources, so our ability to participate in further consultation was interrupted by that. Therefore, we feel that the overall process has been interrupted due to the timing of the consultation and the inability of not just Alzheimer Scotland but several other organisations to participate in that conversation. Having said that, we are keen to be involved and to participate in future conversations about charity regulation.

Shona MacLennan: As a public body, we scan the consultations that are published. For us, it was

a normal part of the process, but I recognise that we operate differently to charities.

Pam Duncan-Glancy: I appreciate that. Thank you. I want to explore the review that has been mentioned. What does that need to take into consideration? We have heard a bit about the independence of that. What would the review look like in order to be sufficiently broad and to be independent?

Vicki Cahill: We would, absolutely, welcome the opportunity to have a wider review of charity regulation. There is the need for recognition of the changing landscape that charities are operating within—as a result of the impact of the pandemic and the on-going impact of the cost of living crisis—and how charities are operating in that environment and under those conditions.

The Charities and Trustee Investment (Scotland) Act 2005, which we are looking to amend, is in need of modernisation. Since 2005, there has been very little in the way of changes to the act, and it does not necessarily reflect the current context. Therefore, we would certainly welcome the opportunity to have a wider review. What that review would look like should be open to discussion, and discussion by large parts of the sector should be welcomed. It should not be focused solely on the regulator's position or the position of large parts of the sector but should be widened to make sure that as many charities as possible have an opportunity to input to, and to influence, what it looks like in the overall context.

Mridul Wadhwa (Edinburgh Rape Crisis Centre): We would welcome a review. I echo what Vicki Cahill said. Our sector is currently going through a strategic funding review—it is an independent review. What is refreshing about that process is that the people who are conducting the review came to us and were very flexible and diverse in how they approached engagement with our sector.

To reflect back on your earlier question, I would say that we were not involved in submitting our response to the consultation until about two days before it closed. That says a lot about our capacity to engage.

The strategic funding review that we in the violence against women sector are going through is positive in that we were reached out to in many ways. We welcome that, because it means that the issue of minority organisations or those that work with marginalised groups being excluded from reviews will be better addressed.

Rami Okasha: Charities in Scotland do amazing things, so any review must start by asking what works really well, rather than by asking what does not work. Thinking about the

issue from that perspective might unlock how we can build on something that is really good.

From the point of view of charity regulation, as a charity that provides health services, we are regulated by OSCR, Companies House, the Care Inspectorate and Healthcare Improvement Scotland. Although those bodies all do really important things, there are areas in which they could be better co-ordinated and more streamlined, and I think that any wider review should take into account how different aspects of regulation work for charities.

Pam Duncan-Glancy: Do you think that there is a need to pull some of that work together into one regulatory framework, or is there a need for those organisations to come to an agreement between themselves but still play their own significant part?

Rami Okasha: I think that it is working separately. I can give a simple example to do with the names of trustees. If what is proposed were to go through, we would have to provide the names of our trustees to four separate regulators four different times. There is an opportunity to think about how that process can be streamlined. I think that it is a question of working together, rather than any major structural reform.

I should also say that providing names of trustees is not an issue for us; the issue is the administrative burden of doing so.

Pam Duncan-Glancy: I appreciate that; that makes sense.

I will now go to Shona NicIllinein.

Shona NicIllinein: We would very much welcome the opportunity to take part in a review and, in particular, to co-ordinate with the charitable organisations that we fund. Many of those are very small and do not have paid employees. If there was a way in which we could co-ordinate a response with them, that would be a very helpful way to support them to give their views to such a review.

Pam Duncan-Glancy: Thank you.

The Convener: We move to questions from Paul McLennan.

Paul McLennan: I want to ask a few questions about the general principles of the bill. Some of you will probably have heard the questions that we asked the first panel, one of which was: do you agree that the existing charity law needs to be updated? Perhaps Rami could answer first.

Rami Okasha: In a proportionate degree, there is nothing in the bill that is problematic or that would be a bad thing to do. In that sense, the answer to your question is yes. The proposals in the bill are sensible tidying-up proposals that will improve the regulation of charities. However, they

are quite focused, and they come from the point of view that regulation is the starting point. There might be other things around charity law that could be looked at in a wider review, but there is nothing controversial in the bill.

Paul McLennan: I do not know whether anyone else has anything to add. The phrase “tidying up” was used quite a bit in yesterday’s engagement session.

Are there are weaknesses in the charity sector in relation to transparency and accountability? I ask Mridul Wadhwa to answer first.

10:15

Mridul Wadhwa: I suppose that there are a number of factors, one of which relates to the proposal on the disqualification of trustees, if that is what your question is about. We would like to see a transparent and clear process that does not exclude people with lived experience—the witness from Volunteer Scotland referred to that. We should also be careful that bankruptcy does not automatically disqualify a person from being a trustee or even a member of the senior management of a charity.

Vicki Cahill: From Alzheimer Scotland’s point of view, we would advocate for any measure that would increase accountability and transparency in charity regulation, and we would support every effort to increase the voice of lived experience. We think that that is a particularly important process that needs to be included in any legislative framework around charity regulation. The participation of the voice of lived experience should be actively encouraged to ensure that that creates transparency from the ground up rather than from a top-down perspective.

Shona Nicllinein: I have a point about the very small organisations that we work with. Any processes should not be overly burdensome on small organisations. From our perspective, matching requirements with the capacity to deliver is an important issue.

Paul McLennan: Does Rami Okasha have anything else to add to what he has heard?

Rami Okasha: Transparency and accountability are really important for charities. The primary duty to be transparent lies with the trustees, and it should remain with them. The regulator’s role should be to set the framework that allows trustees to provide transparency in respect of their charity. That goes back to the point about ensuring that we recognise the wide range of charities and the sizes of charities, which will do things in different ways.

Paul McLennan: I want to move on to the role of OSCR. Does OSCR operate effectively? Are

the proposed extensions to its powers appropriate and proportionate?

Rami Okasha: Broadly speaking, I think that the proposed extensions are proportionate and appropriate. I think that OSCR will need to provide detailed guidance in quite a number of areas about how it intends to use those powers through the publication of its regulatory policies so that there is transparency and understanding between the regulator and charities about how the powers will work in practice. However, I think that, broadly speaking, the proposed extensions are appropriate and that, if used appropriately, they will strengthen public trust in charities.

Paul McLennan: Does Shona Nicllinein have any thoughts on her interactions with OSCR?

Shona Nicllinein: We do not interact directly with it, but I echo what Rami Okasha has just said.

Paul McLennan: Does Mridul Wadhwa or Vicki Cahill have anything to add to that?

Mridul Wadhwa: Although Edinburgh Rape Crisis Centre is a reasonably sized charity in Edinburgh, our interaction with OSCR is pretty limited. It happens maybe once or twice a year, and OSCR responds well. We would be interested in knowing what sort of capacity it will have for greater interaction with us with increased powers. The proposals might require us to have more interaction than normal.

Paul McLennan: So, there will be a watching brief on how that interaction will continue.

Vicki Cahill: I echo the sentiments that have already been expressed. It is also important to remember that OSCR has to provide a dual function. It provides disciplinary action and support and guidance to charities. It is really important that, in any legislative framework, both functions are performed, particularly the provision of support and guidance. It is important that openness and transparency not only come from the third sector towards OSCR but are reflected back the way and that the openness and transparency start from OSCR and work their way down from there.

Paul McLennan: Thanks. That is a good way to finish my questioning.

The Convener: We will move to questions from Evelyn Tweed.

Evelyn Tweed: Some responses have requested that the data be kept to a minimum. What do you see as being too much data?

Vicki Cahill: Alzheimer Scotland advocated in its response to the committee that OSCR should use only the minimum amount of information necessary to perform its function, so anything beyond that would be excessive.

We advocate the position that people who choose to take up the role of trustee in a charitable organisation still have the right to data protection and the right to privacy through existing law. We believe that the publication of names only would be sufficient for public offerings and making the information available to the wider system. Anything beyond that, which would be held in the internal record, should also be kept to a minimum.

We have to understand what information is being gathered, how it will be stored and what mechanisms, if any, there will be to share it within or beyond OSCR. It is really important that we be clear that we are taking on board the absolute minimum information to show that we can still ensure individuals' privacy and protection.

Rami Okasha: I will reflect on the publication of information. In CHAS, we publish a 100-page annual report every year with full accounts, full reporting on activity and a lot of detail on charity governance, and we make it publicly available. Although it is important to maintain confidential information and data protection, there is a huge amount that charities can and should do to describe their work. I am entirely comfortable with doing that, and many other charities would be, too.

Mridul Wadhwa: The information should be limited to names. As a charity, we are registered with Companies House. We use our official address because we have to declare an address for our directors, who are also our trustees, but, in recent times, there have been particular risks to trustees who have served on our charity. Therefore, we would be cautious about what information of theirs was available in the wider community.

I speak for my charity, but I know that the same is true of my sector when I say that we are also keen to bring in more diversity and people with lived experience. There are safety concerns for some people who would join us as trustees, and any information that is held about them should be the bare minimum.

Evelyn Tweed: On the same theme, Mridul, we talked with the previous panel about concerns about diversity and inclusivity in relation to the proposals and how we move forward with that. How do we strengthen the proposals to ensure that diversity and inclusivity are paramount?

Mridul Wadhwa: To echo what Volunteer Scotland said, the issue is the process for what the bill proposes. How do we go about ensuring that any process around disqualification or inclusion for people who want to work or volunteer at charities such as ours is simple and does not create or reinforce fear of the state or state intervention, particularly for people from certain marginalised communities? For those who have

been through the asylum process or even the managed migration process, as well as trans people, we have good evidence of their having experienced state oppression, so any process whereby the state collects information—that is how they are likely to see it—must be simple, less intrusive and very respectful. I do not know what that would look like, but it should be at the centre of any process that is developed.

The Convener: We move to questions from Foysool Choudhury, who joins us online.

Foysool Choudhury: My question is for Mridul Wadhwa, and I would like Rami Okasha to come in, too. As you probably know, I have been involved in third sector organisations all my life. I have worked with small and big organisations, and I have always found that smaller organisations find it very difficult to liaise with OSCR, Companies House and big organisations. Do you think that smaller organisations and minority ethnic organisations were involved in the consultation? When I asked the previous panel of witnesses, they said that only 12 such organisations were involved. Was that enough?

Mridul Wadhwa: In my first response, I said that we got involved in the consultation two days before it closed, so my wild guess is that probably not enough such organisations were involved. Having worked in minority ethnic organisations previously and having sat on their boards, I know that it is unlikely that they would have had the capacity for engagement. That is why any future review must factor in how those conducting the review can come to us rather than us going to them and responding to consultations in the more traditional way.

Rami Okasha: That is an important point. If there is going to be a wider review of charity law, it will be important to ensure that lots of different voices—including a wide range of organisations that represent a wide range of people—are involved. I hope that there will be an opportunity to do that.

Foysool Choudhury: Rami, is there any part of existing charity law that you think is out of date and that smaller organisations should know about?

Rami Okasha: That is a really hard question to answer, and I am not sure that I can answer it well. I am a charity leader but I am not a lawyer, so I do not know whether I can do that question much justice.

Running a charity can be complex. A lot of requirements are rightly placed on charity trustees, on charities organisationally and on staff, so anything that can be done to help people to understand their obligations would be really important, and I commend the work of the SCVO

on that. It does some excellent work to help particularly smaller charities to understand their responsibilities. However, perhaps there is also more work that OSCR could do.

The Convener: Do witnesses have any concerns around the proposal for all charities, regardless of their size, to publish unredacted accounts? Would the publication of these accounts by all charities enhance transparency and accountability in the charity sector?

Shona Nicllinein: I will be honest and say that I do not have a view on that. When organisations apply to us for funding, we ask for their accounts as part of the due diligence process. As far as I am aware, we do not see any risk in their publishing full accounts, but we do not deal with the full range of charities in Scotland. Therefore, from our perspective, the answer is no, but that is not to say that that applies across the board.

The Convener: Thank you, Shona. I will add to my original question and ask whether witnesses agree that removing charitable status from organisations that fail to submit accounts is an appropriate measure.

Vicki Cahill: We feel that removing someone from the register because they have failed to submit and publish accounts in accordance with the legislation is quite a draconian step. That should be the last possible step of a built-in process. It is important to ensure that OSCR provides reasonable support and guidance to enable charities to meet the criteria and obligations set out for them.

There has to be a recognition that there might be good reasons why there might be a failure to comply with a particular direction, especially around the submission and publication of accounts. Those reasons might include lack of capacity in the organisation or administrative issues around how that is done. There could also be issues such as conflict among existing trustees about when and how things should be done. It is therefore important that OSCR has a role in issuing guidance around that and providing support.

10:30

Alzheimer Scotland's initial consultation response said that we recognise that there must be evidence of a persistent failure to comply. Having a desire to be able to do something but being unable to do it is not the same thing as being unwilling to do something. OSCR must provide support as part of the process, and there should be more detail about how that would work.

The Convener: That certainly echoes some of the views that we heard in the informal session yesterday.

I invite Mridul Wadhwa and Rami Okasha to come in, if they have anything to add.

Rami Okasha: I think that the answer to your question is yes: charities publishing their accounts promotes public confidence. Charities are in a privileged position with regard to handling donations from the public, tax, gift aid and so on. Those are things in relation to which public accountability is important.

There is a scale for the level of detail that an organisation's annual report and accounts needs to go into, but the principle is important, and publishing that information promotes public confidence.

The point about what the sanctions might be for not publishing accounts is a good one. Striking a charity off would surely be the very last thing that ought to be done, but, as long as that sanction is used proportionately, it does not seem unreasonable for it to exist.

Mridul Wadhwa: I have nothing to add on the second question. On the first question, as we said in our response, we believe that charities should publish their accounts but that OSCR should provide some support to ensure that those reading the accounts understand what they mean, as well as support for charities who find that that information is used maliciously against them, which is a possibility if the accounts are not read accurately.

The Convener: We will now move to questions from the deputy convener, Emma Roddick.

Emma Roddick: My first question is directed to Mridul Wadhwa, as I know that Edinburgh Rape Crisis Centre submitted some evidence on the issue that I want to ask about. Can you expand on the proposal to extend the disqualification criteria to senior management positions and say how that would affect recruitment?

Mridul Wadhwa: Your first panel this morning said a little bit about who comes to work in charities and where they come from. If we are disqualifying people on the ground of bankruptcy, for example, that could exclude people whose pathway into charities is not what the people who have made that proposal might expect. People go through various challenges in their lives, particularly in the sector that my charity works in. Therefore, the proposal presents some difficulties for us.

We have questions about the additional recruitment methods that we will need to use. Currently, we require people in every role in our organisation to have certification through the

protecting vulnerable groups scheme. I do not know whether a PVG takes things such as bankruptcy into account; we just receive the information that someone is excluded from working with us. However, we need to be careful about that disqualification issue. Further, the proposal relates to people who have control over money, but most charities have reasonable processes for how finances are handled—it is not usually the responsibility of only one person, as the chief executive officer position is usually shared between trustees and senior management.

If the proposal becomes law, there will be cost implications for charities with regard to recruitment. Our accounts show that we have a decent income, but most of that is for front-line service delivery. Often, we do not have much capacity in terms of core support staff and administrative staff, so we need to be mindful of those cost implications.

There is a lot more to be said on this issue, but I will finish my answer there.

Emma Roddick: Thank you very much.

I know that most of the witnesses listened to the earlier panel, so they might have heard me ask Sarah Latto this question. Does anyone have a view on whether it is sensible or necessary to have the same disqualification criteria here as there are in the rest of the UK?

Mridul Wadhwa: I agree with Sarah Latto.

Vicki Cahill: There is an opportunity for us to have a look at what is available. There is a value in having a degree of consistency but, if we are looking at cross-border sharing of information, it would also be useful to have a clear set of guidelines around how information is shared and what information can be shared. For example, if Scotland strengthens its position around disqualification and the information that it holds around that, and if that exceeds the cross-border level, we will have to consider what information should be shared in comparison with our neighbours.

Emma Roddick: Finally on that theme, I would like to go to Shona NicIlinein, because I am keen to pick up on geographical issues. I do not simply mean issues relating to distances and topography; I mean cultural issues, as well. Does Shona NicIlinein have any insights on the impact of the disqualifying criteria in Gaelic and rural and island organisations—on people who have multiple roles and who are relied on in many different roles?

Shona NicIlinein: One thing that we see, particularly in island and rural areas, is to do with population or demographic changes. A decreasing number of people are available to carry out trustee roles. In addition, in any small community—

whatever that community is—there is a reputational risk for people. All those things have to be handled extremely carefully. We want more people to participate, but there must also be a rigorous process that ensures that anybody who is in a position of authority in a charitable organisation has confidence about that.

I did not hear what was said about cross-border sharing, so I will not comment on that. However, I recognise that there are challenges relating to participation in small communities. We want to encourage people to participate rather than deter them.

Emma Roddick: It is also important to ensure that lived experience is in the mix. We talked about that earlier. Will that be made harder with the proposed criteria in respect of having people who maybe have Gaelic and relevant experience for the charities that they want to help?

Shona NicIlinein: It is quite difficult to talk about that in a broad sense. Very often, it comes down to individual circumstances, so I would prefer not to comment on that.

As I have said, it is about making things as open as possible to increase participation and ensuring that safeguards are in place and that the organisation's credibility is robust and sustained locally and in its dealings further afield, if it works further afield.

The Convener: Before we move on to the next theme, Pam Duncan-Glancy has a supplementary question.

Pam Duncan-Glancy: Those of you who heard what was said in the earlier session will have heard my supplementary question. I noted Vicki Cahill's answer about proportionality—I am sorry; it could have been Mridul Wadhwa's answer—and there already being some mechanisms around finances.

What do the witnesses think is the appropriate compromise, so that there is not an onerous burden on charities to do checks on bankruptcy or disclosure? Mridul, your comments on that were really helpful. How do we balance that with not putting people off from applying? The default "no" came up earlier. How do we balance that with the need to protect the integrity and reputation of charities?

I know that there is a lot in there. It is tricky—I feel that we might need to do something, but I would like to know what that is. If the witnesses want to come back to the committee on that in writing, that would be fair.

Mridul Wadhwa: Anything that does not put too much cost and admin on charities would be a good solution. I do not know what that would be or

where it would sit—maybe there could be some kind of checking service that charities could go to.

Vicki Cahill: There is not a great deal of detail in the bill about what the mechanisms and processes would look like. However, in pulling that together and deciding where the burden is placed, it is important that we minimise the amount of input that is required from charities. As part of the bigger picture, we really have to consider how that work would sit with the regulator, how the regulator would absorb it within its existing functions and how that would affect its capacity to play a role in supporting charities. That conversation and discussion have to be held around not only charities providing the necessary openness and transparency but the need to make sure that the appropriate checks are there. Again, it is about having more detail on how processes would work and where we could minimise those processes—for example, by using digital platforms and existing mechanisms, and by trying to avoid the duplication or replication of work that charities already do in the delivery of their outputs.

Pam Duncan-Glancy: Thank you. I appreciate that.

Miles Briggs: Good morning to the panel. Thank you for joining us. What are your views on extending OSCR's powers to allow it to undertake inquiries into former charities and their trustees? I will start with Rami Okasha.

Rami Okasha: That is not an area that I have given much consideration to, but it seems to me that, if we start from first principles, it is about public trust in charity as much as in charities. That suggests to me that it would be appropriate for OSCR to undertake a relevant inquiry into a former charity and former trustee.

Miles Briggs: As no one else has anything to add, I will move to my second set of questions, which are on the issuing of positive directions following inquiry work.

This morning, we have picked up on the fact that burdens are a real part of what we need to look at—that is important. Vicki Cahill touched on the role of supporting and providing guidance, rather than policing.

Do the witnesses think that it is appropriate for OSCR to be able to issue positive directions following inquiry work? I am not sure of the range of charities that Shona Nicllinein's organisation supports, but do the witnesses believe that it is appropriate for designated religious charities to be exempt from that provision?

The Convener: We do not have any takers for those questions, but I think that Rami could answer that.

Rami Okasha: I am happy to come in on the point about positive directions. That is a sensible provision, because inquiries are—and should be—rare. They occur when something has gone wrong, so it should be about fixing things and making them right. The principle of issuing positive directions is a good one, which we welcome, because we know that it will be used appropriately, where OSCR feels that something significant has gone wrong.

Miles Briggs: That is helpful. We want to hear the views of smaller designated religious charities on what would happen if they were involved.

The requirement for charities to have a connection to Scotland is now included in the bill. Do the witnesses consider that to be an appropriate measure? Are there any concerns about that?

10:45

Vicki Cahill: Alzheimer Scotland is widely supportive of the measure requiring a connection to Scotland, which will help to focus OSCR's role and will ensure that it does the work that it must do to support charities that are based in Scotland and that provide services and resources here. It will help to prevent any potential diversion of its role elsewhere. Charities are working under really challenging circumstances, so OSCR's support and guidance should go to support charities in Scotland in particular.

As was mentioned by the earlier panel of witnesses, there has been a refocus and a shift in how having a connection to Scotland is looked at. Focusing resources on where they need to be is a helpful and useful way to consider the connection to Scotland question.

Miles Briggs: I asked the first panel of witnesses a question on giving OSCR powers to appoint interim trustees in specific circumstances where there are no trustees to be found or where trustees are not willing to act. Have the witnesses had any experience of that? Would it be a helpful measure in an emergency situation to support and stabilise a charity?

As nobody has a comment on that, perhaps we need to do more digging into where the idea has come from.

On maintaining a register of charity mergers to make it easier for legacies to be transferred in situations where the original legacy was made to a charity that has since merged and changed its name, do the witnesses have any concerns, or is it a tidying-up measure, as we heard earlier?

Rami Okasha: We certainly welcome that measure. We recognise that people often make wills many years before the will is executed and,

sometimes, there is difficulty for an executor in identifying the intended recipients of a legacy. If the measure helped to reduce ambiguity and the need to test such things in court, that would be helpful and we would welcome it. Charities rely hugely on legacies to be able to deliver services.

Miles Briggs: Is there anything around the legacy issue that we have not captured and that could be improved, or is it straightforward enough? Increasingly, charities look at charitable legacy giving, which might become a greater issue in the future with the impact of the bill and there potentially being fewer charities.

Rami Okasha: How legacies change in the years ahead with changes to generational wealth is a live question among charities. However, I am not sure whether there are any answers in legislation. I can reflect on that point and come back to the committee.

Miles Briggs: Thank you.

The Convener: We move to Jeremy Balfour for his final set of questions.

Jeremy Balfour: Good morning. I return to the questions that I asked the previous panel of witnesses. The three witnesses on this panel represent fairly large charities. Do you see additional costs coming from the proposals that are in the bill, or do they cover things that you are already doing?

Vicki Cahill: The lack of detail certainly means that it is difficult to fully assess the administrative and financial burden that will be placed on charities, regardless of their size. However, it is inevitable that additional administrative activities will have to go on to support the suggestions and proposals that have been put forward in the bill, and there will be a cost associated with the delivery of those. The ability of charities to deliver that will be very much dependent on their structure and whether they can absorb such activities into their existing activity. If not, it might have a further impact through the need to fundraise or source alternatives to meet the administrative burden.

Jeremy Balfour: Shona, I ask you the same question. You deal with smaller charities. Are you concerned about the administration costs?

Shona Nicllinein: We are always concerned about the impact of additional requirements on small organisations, whether statutory or otherwise. There is a need to balance the requirement to be open, transparent and fit for purpose with the capacity that the organisations have to deliver that. That is always the perspective that we have in mind. When we ask for information, the detail that we require varies according to the size of the organisation.

It concerns me, because much depends on the capacity to deliver. Many of the organisations with which we deal do not have employed staff—everything is done by volunteers—so anything that makes it more difficult for them to deliver their services and fulfil their purpose is challenging. Specific support from OSCR and the SCVO, which has been praised for its work, would help to offset that. The focus should be on how those organisations support the smaller organisations to fulfil any additional requirements.

Jeremy Balfour: Would you like there to be some sort of financial limit so that, if a charity was below a certain threshold, it would not have to do the same amount of work as a bigger charity? Could that work in practice?

Shona Nicllinein: It would be well worth investigating that further because the degree of reporting that is required varies according to the size of the organisation. I certainly would be interested in such a proposal.

Jeremy Balfour: My final question is to the whole panel. There will be a further review of charity law once the bill has been passed, but is there anything missing from the bill that you think should be in the bill? Is there anything that stands out that would make the life of your charity and your trustees easier?

Rami Okasha: There is an opportunity to further clarify in the bill what the purpose of OSCR is. The bill is heavy on what OSCR does but it is also important to remember why the regulator exists. It is there for an important purpose, which is—or should be—to promote public confidence in charity generally. There might be an opportunity for the bill to be amended to introduce a general duty on OSCR to ensure that that is one of the things that it does. It is important to be clear about why a regulator exists as well as what it does.

The Convener: Would anyone else like to come in on that point? I do not want to put anyone on the spot.

Vicki Cahill: I am a strong advocate of ensuring that legislation is robust and absolutely sound and that primary legislation provides enough of a structure to hang any further secondary legislation or guidance on. Whatever the final draft of the legislation looks like, it has to be robust. It must be able to provide that structure to enable the secondary legislation or subsequent guidance to be followed up on, and it must provide real clarity on the purpose and intention and how it seeks to deliver that.

Emma Roddick: I will go back to Shona Nicllinein. We have touched on quite a few issues that affect rural, island, Gaelic and small organisations. Do you wish to raise any specific issues on which we have not already touched?

Shona NicIlinein: Thank you for the opportunity to do that. I refer to what we said in our submission about encouraging the use of Gaelic in returns and in the names of organisations, and about generally promoting awareness and understanding of Gaelic in Scotland. That would be my other ask.

Emma Roddick: Tapadh leat.

Shona NicIlinein: Tapadh leibhse.

The Convener: I thank all the witnesses—those in the room and those online—for their evidence. What we have heard will be helpful in our scrutiny.

That concludes our public business for today. Next week, we will continue to take evidence on the bill.

10:55

Meeting continued in private until 11:21.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba