

Inquiry Report under section 33 of the Charities and Trustee Investment (Scotland) Act 2005 regarding a body known as The Highland Titles Charitable Trust for Scotland

Introduction

As a result of inquiries made under section 28 of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) it appeared to OSCR that a body known as The Highland Titles Charitable Trust for Scotland has been misrepresenting itself as a charity in Scotland, and OSCR issued a direction to stop the misrepresentation. Following a review, the decision to issue the direction has been **reversed**, and the direction has been withdrawn.

Background

OSCR initially received a complaint in December 2012 alleging that a body known as Highland Titles Ltd was misrepresenting itself as a Scottish charity. On receipt OSCR took action to warn the Dr Peter Bevis that this was misrepresentation and should be amended. All references were then subsequently removed.

Further to this, OSCR received a further complaint in October 2013 that a body known as 'The Highland Titles Charitable Trust for Scotland' was misrepresenting itself as a charity in Scotland. The complainant provided OSCR with evidence of 'The Highland Titles Charitable Trust for Scotland' advertising itself as a charity.

Findings

OSCR found that the organisation 'The Highland Titles Charitable Trust for Scotland' was not entered in the Scottish Charity Register. It is a registered charity in another jurisdiction, but we found that it carried out activities in Scotland.

In our view the words "charitable trust for Scotland" were synonymous with the term "Scottish charity" and, when used in the context of soliciting funds are likely to undermine public confidence in the charity sector. Section 13(4) of the 2005 Act provides that a body representing itself in this way is to be treated as representing itself as a body entered in the Register, and as being established under the law of Scotland, or managed or controlled wholly or mainly in or from Scotland.

In addition, although the organisation is registered in another jurisdiction OSCR takes the view that where a body carries out activities in any office, shop or similar premises in Scotland, the 2005 Act provides that it may not represent itself as a charity even where it is registered as such under the law of another country or territory.

It is not therefore entitled to refer to itself as “a charity” or “a Scottish charity” or to use in its name words which imply such a status.

Action

On 3 April 2014, OSCR issued a direction under section 31(5) of the 2005 Act requiring Dr Peter Bevis to stop representing the ‘The Highland Titles Charitable Trust for Scotland’ as a charity registered in Scotland.

A person who, without reasonable excuse, refuses or fails to comply with a direction under section 31(5) of the 2005 Act is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000) or imprisonment for a period not exceeding 6 months, or to both.

Review

A review of the decision to issue a direction was subsequently requested, and OSCR issued its review decision on 4 May. As a result of the review OSCR **reversed** the decision to issue the direction.

In undertaking the review, OSCR considered representations on behalf of the Highland Titles Charitable Trust for Scotland to the effect that it was not referring to itself as a ‘Scottish charity’. Also, while it was not registered as a charity in Scotland, it was entitled even so to refer to itself as a charity here, since it fell within the exception for charities established outwith Scotland that is set out in section 14 of the 2005 Act. In particular:

- The Trust is established under the law of a country or territory other than Scotland – that is, Guernsey – and is registered as a charity there
- The Trust is based in the Channel Islands, with two current Trustees (Dr Bevis recently retired as a trustee) who both live in Alderney
- In terms of section 14(b)(i) the Trust does not occupy any land or premises in Scotland
- In terms of section 14(b)(ii) the Trust does not carry out any activities in any office, shop or similar premises in Scotland: its sole function is to own the sole share of Highland Titles Limited, the company which manages the Highland Titles Nature Reserve

The Trust also took the view that, even if the Trust were to manage the Nature Reserve (which is not their intention), such a reserve would not fall within the definition of ‘similar premises’ in section 14(b)(ii) on the basis that it is not similar to an ‘office’ or ‘shop’. Since in the representations made on the Trust’s behalf this situation is hypothetical, OSCR has not considered this further.

OSCR also considered a number of instances where the Trust had been referred to as a charity online or in hard copy, and considered the Trust’s comments on these instances.

On review we found that the Trust is not representing itself as a 'Scottish charity' in the meaning of the 2005 Act. It is referring to itself in Scotland as a charity, but we found that, in principle, the structure of which the Trust is stated to form a part, where its function is stated as being solely to hold the share in Highland Titles Limited enables it, in these particular circumstances, to take advantage of the exception set out in section 14. This is the case provided in particular that it is not carrying out activities, in terms of section 14(b)(ii), in Scotland and that where it refers to itself it does make reference to being established under the law of a territory other than Scotland.

It is unfortunate that in a number of the instances referred to above it was variously stated that the Trust managed the Reserve, or that impression was likely to be gained by a reasonable person.

However, in none of these cases is it clear that the references to the Trust as a charity were actually made by the Trust itself, or even that they were made (in the form in which they appeared) on the Trust's behalf by its subsidiary Highland Titles Limited. On that basis, it did not appear that it had been representing itself as a charity in a way that takes it outside the exception for charities established outwith Scotland by section 14 of the 2005 Act. OSCR's issuing of a section 31(5) direction to Dr Bevis could not therefore be justified on the basis of the available evidence, and the direction has been withdrawn.

It is unfortunate that the Trust has been publicly referred to in ways that give the impression of non-compliance or may mislead the public as to the nature of the activities undertaken by the Trust. On the basis of the explanations given by the Trust of the circumstances of these references, OSCR would expect the Trust and its subsidiary Highland Titles Limited to use their best endeavours to ensure that the Trust is referred to publicly in ways that make its charitable status and the extent of its activities clear.

OSCR
6 May 2014