

## LAND REFORM REVIEW GROUP

Response from Noel Darlow

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The issue of appointments to the governing bodies of the Mount Stuart Trust and the Applecross Trust has recently been raised by the Land Action Scotland campaign ([www.landaction.org.uk/](http://www.landaction.org.uk/)). Families which historically have held these estates in private possession appear to have continued to exercise exclusive control of the corresponding modern-day companies despite the fact that these companies now have charitable status.

A charity is supposed to act in the public interest but the public interest cannot be best served if appointments to the charity's governing body are strongly biased towards members of the same family. Good governance demands that a reasonable effort should be made to seek out and appoint the best available candidates, whomever they may be.

Another issue is the perception that charitable status is being abused as a tax dodge. This is quite toxic to the respect due to charitable status in general, and thus diminishes all Scottish charities and the efforts of the their donors, volunteers and other workers.

Hence, I would like to suggest that packing a governing body with members of the same family should normally be grounds for removal of charitable status. I would define "packing" as a situation where sufficient numbers of the governing body to comprise a voting majority are members of the same family either by birth or by marriage.

In the first instance, the OSCR should ask the charity to explain its appointments policy. If the OSCR is not satisfied that a reasonable effort has been made to secure the best candidates for positions on the governing body, a warning should be issued by the OSCR along with notice of a date at which time the situation will be reviewed. Following this review, the OSCR should have the option to issue a further warning (and date of review) or recommend that the organisation's charitable status be removed.

Note that there could be legitimate exceptions. It is possible that family members may wish to get together to set up a new charity which, as it gathers momentum, may attract wider interest and additional candidates for the governing body. Hence, although it may start out under the control of members of a single family, this may simply be a stage in its evolution rather than a deliberate policy to maintain exclusive control.

In the case of a very small organisation, it could be that the only individuals who have come forward to offer to serve on the governing body are members of a single family and no others are available. Smaller organisations may be doing important work and yet find it difficult to attract candidates for example because they may have less resources to advertise positions. Again, this would not be a deliberate policy to maintain exclusive control.

For reasons such as above, there would need to be a certain amount of discretion in assessing the appropriateness of a governing body "packed" with members of the same family. It could be the case that the individuals concerned are making a genuine effort to manage the charity fairly to the best of their ability; the real problem is where there is a deliberate (and probably unstated..) policy to retain control of an organisation within a single family.