

Charities and Trustee Investment (Scotland) Act 2005
The Scottish Charity Appeals Panel

Response of the Scottish Council of Jewish Communities

The Scottish Council of Jewish Communities is generally supportive of the proposed appeals procedure and of the intention to simplify the current process and 'provide a user-friendly system' for charities

Time frame for appeals

We believe the proposed time frame is reasonable.

Appeals process

We are generally in agreement with the proposed process. However:

i) We are unclear about the implications of Rule 5(2) relating to the disclosure of documents which states: 'Paragraph (1) does not apply in relation to any document which the party could not be compelled to produce on the trial of an action in a court of law *in that part of the United Kingdom where the appeal is to be decided.*' (our emphasis) This would appear to imply that the Panel will have jurisdiction outwith Scotland. Given that charity law is a devolved issue and that OSCR, to whom the initial appeal must be made, is an exclusively Scottish body, we are surprised at this suggestion and request clarification.

ii) **Notice of date, time and place:** We note (Rule 7(2)(d): 'The Panel must include with the notice of hearing.....a request to be informed of any special needs, such as for wheelchair access, which any party may have.' To facilitate administration we suggest that this request should be put not when parties are notified of the venue but earlier in proceedings when (p10) 'the Panel will ask both parties to provide the dates on which they would be free to attend a hearing' in order to ensure that the chosen venue is accessible to all concerned.

iii) **Absence of member of the Panel and Decision of the Panel:** We are concerned that if 'after the commencement of any hearing, a member [of the Panel] is absent, the appeal may..... be heard by the other two members' (Rule 10) and that 'A decision of the Panel may be taken by a majority.....Where the Panel is constituted by two members, the Chair shall have a second or casting vote' (Rule 17 (1) and (2)). Even if both parties consent to continue with a reduced Panel we believe this would be inappropriate as the appeal might effectively be decided by a single person, which would negate the benefits of a panel and increase the possibility of appeals being decided on the basis of bias or conflict of interest.

What Issues and evidence will the Panel will consider?

We are surprised at the suggestion that the Panel might not consider evidence and question how it would otherwise be able to arrive at a sustainable conclusion.

If the proposal that 'the Panel will not review, assess or hear new evidence' is to be adopted we emphasise that this must be made clear to all parties earlier in the appeals process and that they should be urged to present all available evidence to the first (OSCR) appeal in order to reduce the likelihood of an appeal to the Panel and also ensure it has been tabled in case of subsequent proceedings.

In general we support the proposal that the Panel should not consider new evidence, but suggest there should be a provision to enable it to do so in exceptional circumstances when evidence was not available earlier in the process or when the parties had been unaware of its importance and had therefore not presented it to OSCR.

Provision for the award of expenses

We support the proposal that the Panel may award reasonable expenses in the circumstances listed in Rule 19.

RIA

We believe that the options to 'do nothing' would result in a weaker system and would leave both charities and the general public exposed. We agree that 'the appeals panel is an essential part of the implementation of the Charities and Trustee Investment (Scotland) Act' and, with the reservations expressed above, support the introduction of the proposed Rules.

Note: The Scottish Council of Jewish Communities is the representative body of all the Jewish communities in Scotland comprising Glasgow, Edinburgh, Aberdeen and Dundee as well as the more loosely linked groups of the Jewish Network of Argyll and the Highlands, and of students studying in Scottish Universities and Colleges.

In preparing this response we have consulted widely among members of the Scottish Jewish community.