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REGIONAL BOARD REPORT

Subject: Charitable Trustee responsibilities.	**Purpose:** **For Approval** ☐ **For Discussion** ☐ **For Information** ☒
Prepared by: James Ayling	**Date: 27 Nov** 2018

Purpose: To update members on their responsibilities as trustees of a charitable organisation.

Linked to Strategic Goal 3: Provide a high quality College experience.

Executive Summary:

The Board Enhancement Plan 2018/9 has as a development action an annual reminder to Board members of the nature of their charitable responsibilities.

The following is a reminder of the main Trustee responsibilities.

The Code of Good Governance for Scotland's Colleges states :

D.5 Where the college is a charity, all board members, as charity trustees, including staff and student board members, have legal duties and responsibilities under the Charities Act 2005. This includes registering any personal interests that could be seen as conflicting with the interests of the body. The 'objective test' for judging if there is a conflict of interest is:

"… whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your decision making in your role as a member of a public body".

Charity trustees are the people who have general control and management of the charity and are responsible for making sure that the charity works to achieve its charity's purposes.

The charity trustee duties are set out in The Charities and Trustee Investment (Scotland) Act 2005, referred to in this paper as the 2005 Act. OSCR (Office of the Scottish Charity Regulator) as the Scottish Charity Regulator, are responsible for regulating charities registered in Scotland and their charity trustees.

OSCR's website www.oscr.org.uk contains background information on Scottish charities and charity regulation.

Members are recommended to review this website and in particular the section dealing with trustee responsibilities and managing a charity. Their booklet entitled - Guidance and Good practice for Charity Trustees-is very helpful and can be found at : https://www.oscr.org.uk/guidance-and-forms/guidance-and-good-practice-for-charity-trustees

What does being a charity trustee mean?

Being a charity trustee means you are fully responsible for how your charity is run and what it does. It does not necessarily mean running the charity on a day-to-day basis and making operational decisions. All the charity trustees share responsibility. All of the group of charity trustees have charity trustee duties. The group shares the responsibility equally. No individual charity trustee, for example the Chair, has more responsibility than the other charity trustees do. This is called collective responsibility.

Charity Trustee duties.

All charity trustees have legal duties and responsibilities under the 2005 Act. A duty is something that you must do, and all the duties must be met. These duties are separated out into general duties, that set out a broad framework that all charity trustees must work within, and specific duties detailed in the 2005 Act.

The general duties of a trustee are as follows:
A charity trustee must:

1. Act in the interests of the charity
   1.1 You must operate in a manner consistent with the charity's purpose
   1.2 You must act with care and diligence
   1.3 You must manage any conflict of interest between the charity and any person or organisation who appoints trustees

2. Comply with the 2005 Act (specific duties)
   2.1 Charity details on the Scottish Charity Register
   2.2 Reporting to OSCR: making changes to your charity
   2.3 Financial records and reporting
   2.4 Fundraising
   2.5 Providing information to the public.

Specific Additional duties for charity trustees include:

1. Updating the charity's details. Trustees must make sure that OSCR hold the latest information about their charity on the Scottish Charity Register. Charities must seek OSCR's consent before taking certain actions. More information about when a charity must contact OSCR for consent and when they must tell OSCR after certain changes have been made is available on OSCR's **Making changes to your charity** page.

Note that charities are not required to notify OSCR of changes to charity trustees. This is because the information is contained within the Trustees' Annual Report that is sent to OSCR with its Annual Return form**. Principal contact details do need to be intimated and the change in Vice Principal (Finance and Corporate Services) to Hazel Robertson has been actioned.**

2. Reporting to OSCR. Complying with the statutory duty to supply certain information to OSCR:

- **Annual Monitoring**
- **Charity Accounting**
- **Making Changes to Your Charity.**

3. Financial record keeping and reporting. Section 44 of the 2005 Act states that charities must:

- keep proper accounting records
- prepare a statement of account, including a report on its activities, at the end of each financial year
- have the statement of account independently examined or audited
- send a copy of the accounts, along with the annual return, to OSCR.

Accounting records must be kept by the charity for a minimum of 6 years from the end of the financial year in which they were made.

4. Fundraising. Trustees are responsible for taking control of how their charity fundraises.

5. Providing information to the public. Trustees must make sure that their charity meets legal requirements when referring to their charitable status, for example in advertisements, and in their duty to provide information about their charity to the public.

Members are strongly recommended to look over the information on the OSCR website mentioned above.

Recommendation: Members of the Board are requested to note the above .

Previous Committee Approvals:

For publication ☒	**For publication with redactions** ☐	**Not for publication** ☐