

Kilfinan Community Forest Company
Tighnabraich
Argyll
PA21 2BD

Our ref: MI/INQ/19-0115

04 November 2022

Dear Trustees

Kilfinan Community Forest Company – SC038908

We write further to previous correspondence regarding concerns we have about the charity.

Background

We opened an inquiry because we were concerned that charity trustees may not have met their legal duties as laid out in the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act).

This was initially based on voluntary disclosures from the charity in an e-mail communication on 25 November 2021 and in subsequent email communications thereafter.

Our initial regulatory concerns were:

1. It was not clear that the charity was using a governing document that had been properly approved by its members. Neither had any changes been properly notified to Companies House or OSCR
2. Decision making by charity trustees in relation to the use of charitable assets, in particular land and property owned by the charity.
3. How the charity trustees managed any conflict of interest and potential private benefit to trustees

We requested some additional information from the charity, which was provided in full and has been reviewed.



Duties of Charity Trustees

(1) A charity trustee must, in exercising functions in that capacity, act in the interests of the charity and must, in particular—

(a) seek, in good faith, to ensure that the charity acts in a manner which is consistent with its purposes,

(b) act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person, and

(c) in circumstances capable of giving rise to a conflict of interest between the charity and any person responsible for the appointment of the charity trustee—

(i) put the interests of the charity before those of the other person,
or

(ii) where any other duty prevents the charity trustee from doing so, disclose the conflicting interest to the charity and refrain from participating in any deliberation or decision of the other charity trustees with respect to the matter in question.

(2) The charity trustees of a charity must ensure that the charity complies with any direction, requirement, notice or duty imposed on it by virtue of the 2005 Act.

Conclusions

Governing Document

Kilfinan Community Forest Company was incorporated on 31 October 2007 at Companies House.

According to the company's register entry on, no further changes have been made to the articles for the company. Neither is it clear from minutes provided by the charity that any changes to the articles have been made in accordance with the arrangements in the articles for doing so. Therefore we can only conclude that the charity should be using the same set of articles that were in place when the company was incorporated.



Recommendation

The charity trustees review the governing document (articles) for the charity and present any suggested amendments for consideration by members at a future date. The trustees should take care to follow the procedures set out in the governing document for making any future changes. There is guidance on our website in respect of making changes to your charity's governing document. [OSCR | Making changes to your charity](#)

Good practice

- Every charity trustee has an up to date copy of the governing document. You should know what it says and understand what it means.
- All new charity trustees get an induction pack which includes the governing document and up to date information about the activities of the charity.
- When planning what the charity will do, you make sure the plans fit with what the governing document says you can do.
- You read and review the governing document regularly to make sure it is still fit for purpose. You should do this at least once a year.

Decision Making – Use of charitable Assets

Charity Trustees must make sure that the charity's **assets** are only used to advance the charitable purposes set out in the governing document.

Decisions made about the use of land and property owned by the charity should be made collectively by the trustees. Below are useful links to guidance for charities.

Good Practice Programme for land owning charities:

[5eecd1aa5d4c8_20200622-LRRS-GP-CharitiesProtocol.pdf \(landcommission.gov.scot\)](#)

[Land Ownership by Charities and Private Trusts - Good Practice - Our work - Scottish Land Commission](#)

Charity trustees have collective responsibility for running the charity. Meetings are often the best way to make decisions and make sure that you keep all of the charity trustees informed.

When and how meetings will be held will usually be set out in your governing document. You must follow the rules set out in your governing document about meetings. If you do not, any decisions you make could be invalid and you will not be acting in accordance with your charity trustee duties.



Good Practice

- Make sure everyone has the agenda and relevant papers
- Do not be afraid to ask questions if you do not understand or something is not clear – you all have responsibility, not just the chair or the treasurer.
- Follow the voting rules in your governing document – if you do not, any decisions you make could be invalid.
- Assign someone to prepare minutes of the meeting – note the decisions taken and the reasons for them.
- Make sure the minutes are agreed and approved at the next meeting.
- Have clear action points – know who is responsible for them and for following up on them

Private Benefit and Conflict of Interest

The information provided by the charity indicates that conflicts of interest may not always have been managed appropriately at the time that decisions were made by the Charity Trustees.

Charity Trustees must do what is best for the charity, not what is best for you, your friends or family or your business interests.

Charity Trustees must put the needs of the charity before the needs of any other organisation that you are involved with, either in a personal or professional capacity.

Where you are faced with a decision where one option would be in your interest and the other in the interest of the charity you must choose the option that is in the charity's interest. To do this properly, you must declare what your interests are, know when it would be better that you did not take part in certain decisions and take appropriate action.

Good practice

- The charity has an up to date list ([register of interests](#)) detailing where charity trustees work and any other organisations they are involved with.
- The charity has a conflict of interest policy that says what charity trustees should do if there is a conflict of interest and what happens if a charity trustee does something wrong. See the [conflict of interest section](#) for more details.
- There is a policy that makes it clear when a charity trustee, their family or the organisation they work for can be paid, for services provided to the charity. See the [remuneration \(payment\) section](#) for more details.
- The charity has the power in its [governing document](#) to remove charity trustees if they are in serious or persistent breach of the charity trustee duties, or a breach of the requirements of that governing document.

Charities you can trust and that provide public benefit
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If you are at all unsure, you should declare a potential conflict and the other charity trustees can decide whether it poses a conflict.

Summary

Some of the specific concerns raised in relation to decision making and governance at the charity relate to previous trustees / directors that are no longer in post. We are not going to take forward these concerns or pass specific judgement on them.

There have been a number of recent changes in the composition of the board and we are re-assured that an appropriate management / governance structure appears to be in place.

In progressing the recommendations the charity trustees may wish to consider seeking advice and guidance from their local third sector interface;

You may also want to consider taking your own legal or accountancy advice in relation to the above recommendations.

If you have any queries, please do not hesitate to contact me. Thank you for your co-operation throughout.

Yours sincerely



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