

# Public Document Pack



## WILLIAM HILL TRUST SUB-COMMITTEE TUESDAY, 12 DECEMBER 2023

A MEETING of the WILLIAM HILL TRUST SUB-COMMITTEE will be held VIA MICROSOFT

TEAMS on TUESDAY, 12 DECEMBER 2023 at 1.30 pm

All attendees, including members of the public, should note that the public business in this meeting will be livestreamed and video recorded and that recording will be available thereafter for public view for 180 days.

J. J. WILKINSON,  
Clerk to the Council,

6 December 2023

<b>BUSINESS</b>		
1.	<b>Apologies for Absence</b>	
2.	<b>Order of Business</b>	
3.	<b>Declarations of Interest</b>	
4.	<b>Minute (Pages 3 - 4)</b> Consider Minute of the Meeting held on 28 August 2023 for approval and signature by the Chair. (Copy attached.)	2 mins
5.	<b>Monitoring Report for 6 Months to 30 September 2023 (Pages 5 - 12)</b> Consider report by Director Finance and Procurement. (Copy attached.)	10 mins
6.	<b>Charitable De-Registration of SBC Common Good Funds (Pages 13 - 24)</b> Consider report by Acting Chief Financial Officer tabled at 30 March 2023 meeting of Scottish Borders Council for noting by the Sub-Committee. (Copy attached.)	2 mins
7.	<b>Any Other Items Previously Circulated.</b>	
8.	<b>Any Other Items which the Chairman Decides are Urgent.</b>	

## NOTES

1. Timings given above are only indicative and not intended to inhibit Members' discussions.
2. Members are reminded that, if they have a pecuniary or non-pecuniary interest in any item of business coming before the meeting, that interest should be declared prior to commencement of discussion on that item. Such declaration will be recorded in the Minute of the meeting.

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**Membership of Committee:-** Councillors D. Parker (Chair), J. Linehan, J. PatonDay and Mr S. Harris (Melrose and District CC)

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Please direct any enquiries to William Mohieddeen  
Tel: 01835 826504; Email: [william.mohieddeen@scotborders.gov.uk](mailto:william.mohieddeen@scotborders.gov.uk)

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**SCOTTISH BORDERS COUNCIL  
WILLIAM HILL TRUST SUB-COMMITTEE**

MINUTES of Meeting of the WILLIAM HILL TRUST SUB-COMMITTEE held via Microsoft Teams on Monday, 28 August 2023 at 2.30 pm

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Present:- Councillors D. Parker (Chair), J. Linehan and J. PatonDay

Apologies:- Mr S. Harris

In Attendance:- Statutory Accountant (G. Reid), Solicitor (F. Rankine), Trainee Solicitor (M. Beck) and Democratic Services Officer (W. Mohieddeen).

1. **MINUTE**

There had been circulated copies of the Minute of the Meeting held on 20 June 2023.

**DECISION**

**AGREED to approve the Minute for signature by the Chair.**

2. **MONITORING REPORT FOR 3 MONTHS TO 30 JUNE 2023**

There had been circulated copies of a report by Director Finance and Procurement that provided the details of the income and expenditure for the William Hill Trust Fund for the three months to 30 June 2023, a full year projected out-turn for 2023-24, and projected balance sheet values as at 31 March 2024. Appendix 1 of the report provided the projected income and expenditure position for 2023-24 which showed a projected surplus of £11,557 for the year. Appendix 2 of the report provided a projected balance sheet value as at 31 March 2024 which showed a projected increase in reserves of £11,557. Appendix 3 of the report showed the value of the Aegon Asset Management Investment Fund to 30 June 2023. The Statutory Accountant presented the report and advised Members that the application for financial assistance to Melrose and District Community Council of £430 which was approved at the meeting held on 20 June 2023 had been omitted from the report.

**DECISION**

**NOTED:**

- (a) **the projected income and expenditure for 2023-24 in Appendix 1;**
- (b) **the projected balance sheet value as at 31 March 2024 in Appendix 2; and,**
- (c) **the current position of the Aegon Asset Management Investment Fund in Appendix 3.**

*The meeting concluded at 2.37 am.*

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## **MONITORING REPORT FOR 6 MONTHS TO 30 SEPTEMBER 2023**

**Report by Director of Finance & Procurement**

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### **WILLIAM HILL TRUST FUND SUB-COMMITTEE**

**12 December 2023**

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#### **1 PURPOSE AND SUMMARY**

- 1.1 This report provides the details of the income and expenditure for the William Hill Trust Fund for the six months to 30 September 2023, a full year projected out-turn for 2023/24, and projected balance sheet values as at 31 March 2024.**
- 1.2 Appendix 1 provides the projected income and expenditure position for 2023/24. This shows a projected surplus of £11,557 for the year.
- 1.3 Appendix 2 provides a projected balance sheet value as at 31 March 2024. It shows a projected increase in reserves of £11,557.
- 1.4 Appendix 3 shows the value of the Aegon Asset Management Investment Fund to 30 September 2023.

#### **2 RECOMMENDATIONS**

##### **2.1 I recommend that the Trust Fund Sub-Committee:**

- (a) Notes the projected income and expenditure for 2023/24 in Appendix 1;**
- (b) Notes the projected balance sheet value as at 31 March 2024 in Appendix 2;**
- (c) Notes the current position of the Aegon Asset Management Investment Fund in Appendix 3.**

### 3 BACKGROUND

3.1 This report provides the Committee with financial information for the period to 30 September 2023 and projections to 31 March 2024. The report also contains a projected balance sheet for the Trust Fund as at 31 March 2024.

### 4 FINANCIAL POSITION 2023/24

4.1 Appendix 1 provides details on income and expenditure for the 2023/24 financial year. The projected net position for the year is a surplus of £11,557.

#### 4.2 Income & Expenditure – Non-Property Related Income

- (a) The projected outturn position shows an amount of £170 relating to interest receivable on cash held by SBC. Also included are dividends from the Trust Funds investment in Aegon Asset Management amounting to £9,795 with the projection for 2023/24 remaining at the 5% target and the monthly distribution profile projections provided by Aegon. The position will be monitored closely with Aegon Asset Management.
- (b) Included within other income is a rebate from Aegon Asset Management of £47, which has been re-invested to purchase an additional 50 units.

#### 4.3 Income & Expenditure – Donations from Other Trusts.

Approved budgets for 2023/24 have been calculated using an average of prior years' donations.

#### 4.4 Income & Expenditure – Grants & Other Donations

The grants and other donations approved and distributed to 31 March 2024 are shown below:

<b>Grant Recipients</b>	<b>Approved</b>	<b>£</b>
<b>Approved and Paid to 30 September 2023</b>		
Sports Champion Melrose Primary	Annual	40
Melrose Music Festival	21/03/23	1,250
Melrose & District Community Council	20/06/23	430
<b>Total Paid to 31 March 2024</b>		<b>1,720</b>
<b>2023/24 Budget</b>		<b>12,090</b>
<b><i>(Unallocated)/Over allocated Budget</i></b>		<b><i>(10,370)</i></b>
<b>2024/25 Future Commitments</b>		
Sports Champion Melrose Primary	Annual	<b>40</b>

4.5 Appendix 2 provides the actual balance sheet value as at 1 April 2023, the projected movement in year and a projected balance sheet as at 31 March 2024.

#### 4.6 **Balance Sheet –Investment Fund**

The fund has an 13.16% unrealised loss in market value since investment, largely due to continued volatility in investment markets. Overall, taking account of the income received, the fund has achieved a return of 15.88% since investment in February 2018.

#### 4.7 **Balance Sheet – Cash Balance**

The cash held by the fund is projected to be £37,627 at 31 March 2024 and is detailed below:

<b>Cash Balance</b>	<b>£</b>
<b>Opening Balance at 1 April 2023</b>	<b>26,298</b>
Projected surplus for year from Income & Expenditure Statement	11,557
Net Cash Movement in Debtors/Creditors	0
Rebate Investment in Aegon	(228)
<b>Projected Closing Balance at 31 March 2024</b>	<b>37,627</b>

#### 4.8 **Balance Sheet – Capital Reserve**

The movement in the Capital Reserves includes the unrealised loss for the Aegon Asset Management Fund as at 31 March 2023, but due to the nature of the markets no estimate has been made for the future year's movement.

### **5 IMPLICATIONS**

#### 5.1 **Financial**

There are no further financial implications other than those explained above in Section 4.

#### 5.2 **Risk and Mitigations**

There is a risk that investments in the Aegon Asset Management Fund may reduce in value due to market or investment performance. This risk cannot be fully mitigated. However, it is being managed by the selection of a Fund Manager with a clear objective of preserving capital values while aiming to produce returns in line with the benchmark.

#### 5.3 **Integrated Impact Assessment**

There is no impact or relevance to Equality Duty or the Fairer Scotland Duty for this report. This is a routine financial monitoring report which forms part of the governance of the management of the Trust Funds. Nevertheless, a light touch assessment has been conducted and this will be published on SBC's Equality and Diversity Pages of the website as in doing so, signifies that equality, diversity and socio-economic factors have duly been considered when preparing this report.

## 5.4 Sustainable Development Goals

Whilst there are no economic, social or environmental effects arising from the proposals contained in this report, there are, through the activities reported upon, positive impacts upon the economy through protection of employment, positive impacts upon the quality of community life and improvements in local amenities and nurturing of local talent. The potential improvement in levels of income through the use of the new investment fund will act to make the Trust Fund more sustainable in the future.

## 5.5 Climate Change

There are no effects on climate change arising from the proposals contained in this report.

## 5.6 Rural Proofing

There are no effects on rural proofing arising from the proposals contained in this report.

## 5.7 Data Protection Impact Statement

There are no personal data implications arising from the proposals contained in this report.

## 5.8 Changes to Scheme of Administration or Scheme of Delegation

There are no changes required to the Scheme of Administration or Scheme of Delegation arising from the proposals contained in this report.

## 6 CONSULTATION

6.1 The Chief Legal Officer (including as Monitoring Officer), the Chief Officer Audit and Risk, Director (People Performance & Change), the Clerk to the Council and Communications have been consulted and their appropriate comments have been incorporated into this report.

### Approved by

**Suzy Douglas**  
**Director of Finance & Procurement**

### Author(s)

Kirsten Robertson	Statutory Reporting & Treasury Business Partner – Tel: 01835 825506
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### Background Papers:

**Previous Minute Reference:** William Hill Trust Fund Committee 22 August 2023.

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. We can also give information on other language translations as well as providing additional copies.

Contact us at Pensions & Investment Team, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA. Tel: 01835 824000 Fax: 01835 825166  
Email: [t&cteam@scotborders.gov.uk](mailto:t&cteam@scotborders.gov.uk)



## PROJECTED INCOME AND EXPENDITURE 2023/24

	Actuals at 30/09/23	Full Year Approved Budget 2023/24	Full Year Projected Budget 2023/24	Over/ (Under) Spend 2023/24	Para Ref	Commentary
	£	£	£	£		
<b>INCOME</b>						
<b>Non-Property Related Income</b>						
Interest on Cash deposited with Council	(0)	(170)	(170)		4.2	Est 5% return
Investment Fund – Dividends Rec'd	(5,406)	(9,795)	(9,795)		4.2	
Misc Income	(47)	(170)	(170)		4.2	
	<b>(5,453)</b>	<b>(10,135)</b>	<b>(10,135)</b>			
<b>Donations from Other Trusts</b>						
Greenyards Trust	(0)	(300)	(300)		4.3	3 year average
Gibson Park	(0)	(13,212)	(13,212)		4.3	
	<b>0</b>	<b>(13,512)</b>	<b>(13,512)</b>			
<b>TOTAL INCOME</b>	<b>(5,453)</b>	<b>(23,647)</b>	<b>(23,647)</b>			
<b>EXPENDITURE</b>						
<b>Grants &amp; Other Donations</b>						
General Fund	1,720	12,090	12,090		4.4	3 year average
<b>TOTAL EXPENDITURE</b>	<b>1,720</b>	<b>12,090</b>	<b>12,090</b>			
<b>Total Net (Surplus)/Deficit for year</b>	<b>(3,733)</b>	<b>(11,557)</b>	<b>(11,557)</b>			

## PROJECTED BALANCE SHEET VALUE AS AT 31 MARCH 2024

	Opening Balance at 01/04/23  £	Projected Movement in Year  £	Projected Closing Balance at 31/03/24  £
<b>Capital in Investment Funds</b>			
Investment Fund Book Value	209,757	228	209,985
Unrealised Gains/(Loss)	(22,484)	0	(22,484)
<b>Market Value</b>	<b>187,273</b>	<b>228</b>	<b>187,501</b>
<b>Current Assets</b>			
Debtors	587	0	587
Cash deposited with SBC	26,298	11,329	37,627
<b>Total Current Assets</b>	<b>26,885</b>	<b>11,329</b>	<b>38,214</b>
<b>Current Liabilities</b>			
Creditors	0	0	0
<b>Total Current Liabilities</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Net Assets</b>	<b>214,158</b>	<b>11,557</b>	<b>225,715</b>
<b>Funded by: Reserves</b>			
Revenue Reserve Fund	(122,314)	(11,557)	(133,871)
Capital Reserve Fund	(91,844)	0	(91,844)
<b>Total Reserves</b>	<b>(214,158)</b>	<b>(11,557)</b>	<b>(225,715)</b>

**INVESTMENTS EXTERNALLY MANAGED**

<b>Book Value Movements</b>	<b>Units</b>	<b>£</b>
Aegon Asset Management Investment (12 February 2018)	137,529	148,903
Aegon Fund Rebate – (2018-2019)	141	152
Aegon Asset Management Investment (February 2020)	26,295	30,000
Aegon Fund Rebate – (2019-2020)	114	127
Aegon Fund Rebate – (2020-2021)	166	167
Aegon Fund Rebate – (2021-2022)	164	180
Aegon Asset Management Investment (June 2022)	31,208	30,000
Aegon Fund Rebate – (2022-2023)	234	228
Aegon Fund Rebate – (2023-2024)	50	47
<b>Total Book Value as at 30 September 2023</b>	<b>195,901</b>	<b>209,804</b>

<b>Market Value of Investment</b>	<b>£</b>
31 March 2018	154,910
Fund 1 – Transfer (1 April 2018)	(199)
Fund 2 – Transfer (1 April 2018)	(5,807)
1 April 2018	148,904
31 March 2019	150,088
31 March 2020	150,723
31 March 2021	179,224
31 March 2022	179,222
30 June 2022	189,671
30 September 2022	177,736
31 December 2022	187,728
31 March 2023	187,273
30 June 2023	188,076
30 September 2023	184,186
<b>Increase/(Decrease) from Total Cash Invested</b>	<b>(25,618)</b>

<b>Return on Investment from inception</b>	<b>Capital Return %</b>	<b>Total Return %</b>
to 31 March 2018	-0.30	
to 31 March 2019	+3.86	+9.41
to 31 March 2020	-15.16	-5.98
to 30 June 2020	-8.52	+2.76
to 30 September 2020	-7.91	+4.83
to 31 December 2020	-0.61	+14.09
to 31 March 2021	+0.78	+16.84
to 30 June 2021	+1.10	+18.71
to 30 September 2021	+0.36	+19.52
to 31 December 2021	+3.93	+25.02
to 31 March 2022	+0.68	+22.56
to 30 June 2022	-10.70	+10.49
to 30 September 2022	-16.12	+5.84
to 31 December 2022	-11.43	+12.81
to 31 March 2023	-11.69	+13.46
to 30 June 2023	-11.30	+16.45
to 30 September 2023	-13.16	+15.88

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## CHARITABLE DE-REGISTRATION OF SBC COMMON GOOD FUNDS

Report by Acting Chief Financial Officer

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### SCOTTISH BORDERS COUNCIL

30 March 2023

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#### 1 PURPOSE AND SUMMARY

- 1.1 **This report advises Members of the intention by the Office of the Scottish Charity Regulator (OSCR) to remove the SBC Common Good Funds, charity number SC031538, from the Scottish Charity Register (the Register).**
- 1.2 The 12 Common Good Funds (Coldstream, Duns, Eyemouth, Galashiels, Hawick, Innerleithen, Jedburgh, Kelso, Lauder, Melrose, Peebles and Selkirk) are registered with the Office of the Scottish Charity Regulator (OSCR) as 1 registered charity, registration number SC031538.
- 1.3 A letter received from OSCR in December 2022 is attached at Appendix 1. This provides advance notification of the intention to remove the SBC Common Good Funds, registration number SC031538, from the Register, and outlines:
- The reason for the decision
  - The process by which the Charity will be removed from the Register
  - The effect of removal
- 1.4 OSCR has concluded that:
1. Scottish Borders Common Good is not a 'body' with a constitution distinct and separate from the Council that is capable of being entered in the Register
  2. The Charity does not meet the charity test because it does not have purposes that consist only of one or more of the charitable purposes in section 7(2) of the 2005 Act
  3. Because it has been concluded that the Charity does not have wholly charitable purposes an assessment of public benefit has not been carried out
- 1.5 The Council's Chief Legal Officer and Acting Chief Financial Officer agree with OSCR's conclusions that this is the correct approach. Following deregistration, annual accounts will not be prepared, audited and submitted to OSCR. The Common Good funds will instead be consolidated within the Council's statutory accounts. Outturn reports will continue to be presented to Common Good fund Committees setting out the annual income and expenditure associated with each fund and assets they hold on their balances sheet at 31 March each year. Separate records will still be maintained for each Common Good funds and current monitoring arrangements will continue.

## **2 RECOMMENDATIONS**

- 2.1 It is recommended that Scottish Borders Council agrees with the notification from OSCR to remove the SBC Common Good Funds, charity number SC031538, from the Register and therefore resolves not to challenge the OSCR decision.**

### **3 BACKGROUND**

- 3.1 The 12 Common Good Funds (Coldstream, Duns, Eyemouth, Galashiels, Hawick, Innerleithen, Jedburgh, Kelso, Lauder, Melrose, Peebles and Selkirk) are registered with the Office of the Scottish Charity Regulator (OSCR) as 1 registered charity, registration number SC031538.
- 3.2 The original registration was by Borders Regional Council prior to 1995, when charity registration was managed by HM Revenue & Customs. The reasons for this historic decision are not clear and records no longer exist to support the rationale. It was possibly to take advantage of tax benefits available at that time with regards to investment income, particularly in relation to share dividends. These tax benefits are no longer available, and there exists an anomalous position whereby the majority of Common Good Funds controlled by Scottish local authorities are not registered charities but those in the Borders still carry this designation.
- 3.3 There are particular costs associated with the accounting and auditing arrangements for charities, and these could be mitigated were the Funds not registered as a charity. The process for deregistering charities with OSCR has not previously been clear until now.

### **4 OFFICE OF THE SCOTTISH CHARITY REGULATOR (OSCR)**

- 4.1 A letter received from OSCR in December 2022 is attached at Appendix 1. This provides advance notification of the intention to remove the SBC Common Good Funds, registration number SC031538, from the Register, and outlines:
- The reason for the decision
  - The process by which the Charity will be removed from the Register
  - The effect of removal
- 4.2 A charity is a body entered in the Register. OSCR may enter a body in the Register and allow a body to remain in the Register only if it considers that the body meets the charity test as set out in sections 7 and 8 of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act). The charity test comprises the following:
1. Assessment of whether the Charity is a 'body'
  2. Assessment of whether the Charity has only charitable purposes
  3. Assessment of whether the Charity provides public benefit
- 4.3 OSCR has concluded that:
1. Scottish Borders Common Good is not a 'body' with a constitution distinct and separate from the Council that is capable of being entered in the Register
  2. The Charity does not meet the charity test because it does not have purposes that consist only of one or more of the charitable purposes in section 7(2) of the 2005 Act
  3. Because it has been concluded that the Charity does not have wholly charitable purposes an assessment of public benefit has not been carried out

- 4.4 The Council's Chief Legal Officer and Acting Chief Financial Officer agree with OSCR's conclusions that this is the correct approach. The decision to remove the Charity will be made under section 30(1)(b) of the 2005 Act. It is the intention that the removal will take effect from 31 March 2023.
- 4.5 Scottish Borders Council will have a right to request a review of the formal decision during the 21 day period commencing on the date that the formal notice is issued in early March 2023. The procedure for requesting a review will be set out in the formal notice.
- 4.6 Once removed from the Register there will be no duty to account to OSCR and there will be no requirement to provide final accounts for the financial year ending on 31 March 2023.

## **5 IMPLICATIONS**

### **5.1 Financial**

There is an estimated charge of £1,000 for audit costs of the Common Good Fund accounts for 2022/23 which will no longer be applicable. This will be redirected to fund inflationary increases in the Council's external audit fees.

### **5.2 Risk and Mitigations**

Following deregistration, annual accounts will not be prepared, audited and submitted to OSCR. The Common Good funds will instead be consolidated within the Council's statutory accounts. Outturn reports will continue to be presented to Common Good fund Committees setting out the annual income and expenditure associated with each fund and assets they hold on their balances sheet at 31 March each year. Separate records will still be maintained for each Common Good funds and current monitoring arrangements will continue.

### **5.3 Integrated Impact Assessment**

There is no impact or relevance to Equality Duty or the Fairer Scotland Duty for this report.

### **5.4 Sustainable Development Goals**

There are no economic, social or environmental effects arising from the proposals contained in this report.

### **5.5 Climate Change**

There are no effects on climate change arising from the proposals contained in this report.

### **5.6 Rural Proofing**

There are no effects on rural proofing arising from the proposals contained in this report.



## 5.7 Data Protection Impact Statement

There are no personal data implications arising from the proposals contained in this report.

## 5.8 Changes to Scheme of Administration or Scheme of Delegation

There are no changes required to the Scheme of Administration or Scheme of Delegation arising from the proposals contained in this report.

## 6 CONSULTATION

6.1 The Chief Legal Officer (including as Monitoring Officer), the Chief Officer Audit and Risk, Director (People Performance & Change), the Clerk to the Council and Communications have been consulted and their comments have been incorporated into this final report.

### Approved by

**Suzy Douglas**  
**Acting Chief Financial Officer**

**Signature .....**

### Author(s)

Suzy Douglas	Acting Chief Financial Officer (X5881)
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### Background Papers:

### Previous Minute Reference:

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. We can also give information on other language translations as well as providing additional copies.

Contact us at Pension & Investments, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA. Tel: 01835 824000 Fax: 01835 825166  
Email: t&cteam@scotborders.gov.uk

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8 December 2022

**BY EMAIL ONLY**

Treasury Business Partner, Scottish Borders Council

**Scottish Borders Council Common Good Funds SC031538  
Advance notice of removal from the Scottish Charity Register**

I am writing to you as the Principal Contact of the Scottish Borders Council Common Good Funds (SC031538) (the Charity) to give you advance notice that the Scottish Charity Regulator (OSCR) intends to remove the Charity from the Scottish Charity Register (the Register). Please bring this letter to the attention of the charity trustees.

This letter explains the reason for our decision, the process by which the Charity will be removed from the Register and the effect of removal. Please treat this as a courtesy letter, to give advance notice of our intention in order that Scottish Borders Council (the Council) can make any preparations it thinks necessary before the removal takes effect. Formal notice of our decision will follow in due course as explained below.

**The reason for our decision  
The charity test**

A charity is a body entered in the Register. OSCR may enter a body in the Register and allow a body to remain in the Register only if it considers that the body meets the charity test as set out in [sections 7](#) and [8](#) of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act).

A body meets the charity test if:

1. its purposes consist only of one or more of the charitable purposes listed in section 7(2) of the 2005 Act; and
2. it provides (or, in the case of an applicant provides or intends to provide) public benefit in Scotland or elsewhere

**Assessment of whether the Charity is a 'body'**



The Charity was entered in the Register on 1 April 2006 under [section 99\(1\)](#) of the 2005 Act; that is, as a body entitled by virtue of section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 to refer to itself as a ‘Scottish charity’ immediately prior to the commencement of the 2005 Act.

We have considered whether the Charity is a ‘body’ capable of being entered in the Register.

Common Good generally comprises land and/or other assets historically vested in Scottish burghs and then vested by legislation in successive local authorities. Section 15 of the Local Government etc. (Scotland) Act 1994 (the 1994 Act) provided for the vesting of Common Good property in the newly created unitary authorities themselves. Article 12 and Schedule 2 of the Local Authorities (Property Transfer) (Scotland) Order 1995 provided for the various burgh funds that comprise the Scottish Borders Common Good to be transferred to and vested in Scottish Borders Council with effect from 1 April 1996.

Common Good land and other assets are therefore vested in and owned by the Council itself. The assets of Scottish Borders Common Good are held in trust by the Council but critically this arrangement does not involve the creation of a trust or any other form of body that is separate in identity from the Council. While the financial accounting for Common Good funds is carried out separately from the Council’s main accounts, this is for the improved transparency regarding the use and treatment of the Common Good funds and does not denote a distinct body.

As such, we conclude that Scottish Borders Common Good is not a ‘body’ with a constitution distinct and separate from the Council that is capable of being entered in the Register.

### **Assessment of whether the Charity has only charitable purposes**

We also considered whether the Charity meets the charity test in terms of having only charitable purposes.

Section 15(4) of the 1994 Act provides for any Common Good property vesting in a new unitary authority to be administered, in the case of the Council, ‘having regard to the interests of the inhabitants of the area to which the Common Good formerly related’. We conclude that while the Council may apply the Common Good for charitable purposes, it is not confined to doing so. In having regard to the interests of the inhabitants of the former burghs that comprise the Scottish Borders, the Council may apply the Common Good for any purpose consistent with its functions as a local authority.

As such, we conclude that the Charity does not meet the charity test because it does not have purposes that consist only of one or more of the charitable purposes in section 7(2) of the 2005 Act.

### **Assessment of whether the Charity provides public benefit**

OSCR determines whether a charity provides public benefit by considering the activities it undertakes in furtherance of its charitable purposes. As our [published guidance \*Meeting the Charity Test\*](#) explains, ‘not everything that is of benefit to the public will be charitable. Public benefit in a charitable sense is only provided by activities which are undertaken to advance an organisation’s charitable purposes’. Because we have concluded that the Charity does not have wholly charitable purposes we have not carried out an assessment of public benefit.

### **Our duties and powers**

OSCR maintains the Register. Where it appears that a charity does not meet the charity test we must, in terms of [section 30\(1\)](#) of the 2005 Act, either:

1. direct the charity to take such steps as we consider necessary for the purposes of meeting the charity test; or
2. remove the charity from the Register

We have taken the decision to remove the Charity from the Register, as opposed to directing it to take steps to meet the charity test, because we have concluded that the Charity is not a ‘body’ and, as such, it should not be in the Register.

### **The process of removal**

The decision to remove the Charity will be made under section 30(1)(b) of the 2005 Act.

We will give formal written notice to the Charity of our decision under [section 72\(2\)\(c\)](#) of the 2005 Act setting out the reason for our decision (as set out above) and advising the Charity of its right to request a review under [section 74](#) of the 2005 Act. Section 30 decisions are reviewable upon written request by the person or body that is the subject of the decision but there is no third party right to make representations.

[Section 73\(2\)](#) of the 2005 Act provides that a decision is of no effect unless the required notice is given and either:

1. the period of 21 days within which OSCR must, on request, review the decision expires without a request being made; or

2. where a review is requested, the review and any subsequent appeal is concluded with the original decision being confirmed.

On the date that OSCR's decision takes effect, the Charity will be removed from the Register. At the same time, we will publish on our website an inquiry report as required by [section 33\(1\)\(a\)\(i\)](#) of the 2005 Act. For the avoidance of doubt, I should explain that the Charity will still be searchable in the Register after the date of removal but only under the 'ceased charities' part of the Register.

It is our intention that the removal will take effect from 31 March 2023 to coincide with the end of the Charity's financial year. We will therefore issue formal notice to the Charity in early March in order to allow for the statutory review period to expire.

### **Removal from the Register – protection of assets**

[Section 19](#) of the 2005 Act provides for the protection of assets held by a body immediately prior to its removal from the Register. Because we have concluded that the Charity is not a 'body', we are of the view that the provisions of section 19 do not apply to it.

The Charity will not be under duty to account to OSCR and we will not monitor the use of its assets once it is removed from the Register. We will also not require the Charity to provide us with final accounts for the financial year ending on 31 March 2023. I include this information only for the sake of completeness and to avoid any doubt.

### **Effect of removal**

Once removed from the Register, the Charity will not be entitled to refer to itself as a 'charity' or to use its former registered charity number. We ask the charity trustees to take steps to ensure that any references to its charitable status are removed from new publications intended for issue after the date of removal and from websites and other digital platforms.

If the Charity has a Tax Reference number we recommend that the trustees contact HMRC to advise them of the removal. Loss of charitable status can in some instances constitute a 'disposal' triggering a liability for Capital Gains Tax. We are advised that local authorities are exempt from Capital Gains Tax under section 271 of the Taxation and Chargeable Gains Act 1992 but the charity trustees may wish to satisfy themselves on this point.

We also recommend that the charity trustees give consideration to the effect of removal upon any relief from non-domestic rates currently enjoyed by the Charity.

### **Right to review**

As explained above, the Charity will have a right to request a review of our formal decision during the 21 day period commencing on the date that our formal notice is issued in March 2023. The procedure for requesting a review will be set out in the formal notice.

In the meantime, if you or the charity trustees have any questions or require clarification of any of the points set out in this letter please do not hesitate to raise them with me.

Yours sincerely

**Steve Kent**  
**Policy Manager**

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