

Applecross Community Fund

Meeting with Corra Irwin, Solicitor, on 29/1/21 – matters arising requiring decision

Purposes

The purposes in the draft constitution have been expressed in more detailed terms and are wider in scope, as follows:

“The organisation’s purposes are:

The distribution of funding within the Community Council area(s) of [t/b/c] for (a) the prevention or relief of poverty; (b) the advancement of education; (c) the advancement of health; (d) the saving of lives; (e) the advancement of citizenship or community development; (f) the advancement of the arts, heritage, culture or science; (g) the advancement of public participation of sport; (h) the provision of recreational facilities, or the organisation of recreational facilities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended; (i) the advancement of environmental protection or improvement; (j) the relief of those in need by reason of age, ill health, disability, financial hardship or other disadvantage; (k) the advancement of animal welfare and (l) and for any other purpose that may reasonably be regarded as analogous to any of the preceding purposes”

This is now a standard form of wording that CI indicated was advisable in order to satisfy the requirements of OSCR (Office of the Scottish Charity Regulator) who like to be given examples of the actual activities of organisations; in the case of ACF the sorts of projects it would support and people, businesses or organisations.

She indicated that a catch-all of ‘such other activities as the Trustees considered appropriate’ would not be acceptable to OSCR.

The revised purposes appear to include all of the aspects of those previously approved by the Forum.

Does the Forum approve the revised purposes?

Structure

Membership

It was explained by CI that it is a requirement of a SCIO that it have a membership separate from the Board of Trustees / Directors. The role of the members, as distinct from the Trustees, is to provide oversight of the charity's operations and to hold the Trustees accountable for their actions. It is the membership that has overall control of the governance. So, it is the membership that would have to approve any changes to the constitution. It is the membership that will appoint new Trustees when that requirement arises (and the removal of Trustees for that matter). The Trustees would present their annual report and accounts to the Membership for approval each year at the AGM.

There are two options as to how the membership may be structured. The first is that the membership would be equivalent to the Board membership; the Directors would be the members. This has the attraction of simplicity and ease of administration but offers no effective independent oversight. The second is that a wider membership would be created that would have oversight of the Board and appoint new Trustees / Directors.

CI explained that organisations can be members but that OSCR would require to know by production of, for example, a constitution, that the organisation is a constituted body. She further explained that with an organisation such as ACF which, will be holding and disbursing funds, she anticipated OSCR would prefer to see a wider structure that would offer a good degree of oversight and accountability. **There was a clear recommendation that the wider form of membership should be formed.** The application for formation of the SCIO could be presented on the narrower basis of the Trustees being the members and vice versa but she expected some push back from OSCR to that.

There can be voting and non-voting members; for example, those living outwith the geographical area but having an interest in the community might be non-voting members, as could under 16's, able to attend and contribute to meetings but not to vote.

There was some discussion as to the practicalities of having a membership open to the individual members of the community. This would require individuals to apply for membership, for the application to be considered and processed by the Trustees and for a Register of Members to be kept and maintained. Any change in membership would have to be recorded and the Register updated within quite strict time limits. This is a level of bureaucracy and administration that would be unsustainable by the organisation that is in contemplation. It would be desirable, therefore, to have a more restricted membership that is simple to record but which offers the requisite degree of oversight and accountability.

The matter of possible conflicts of interest of organisations that might be members and potential beneficiaries of the Fund, or wanting to apply for funds, was discussed. CI made it clear that this is commonplace and not a problem. In a small community it was difficult to avoid such situations. The constitution would provide for how to deal with such conflicts of interest and, in essence, the body or individual in question would simply sit out of discussions and decisions regarding their application.

It was suggested by CI that the Community Council could be a member. There followed some discussion regarding other groups within the Community that might be members. It was agreed that, as the Forum is very deliberately a non-constituted body without a formal constitution, it cannot be a member. The Chair of the Forum or a nominee of the Forum could, though, be a member and represent the views of the Forum in ACF matters.

Suggested Conclusion

A possible membership structure therefore emerged comprising the Trustees / Directors, the Community Council and the Chair of the Forum. Whether the other organisations within the Community or some of them, such as the original core members of the Forum, should be members also remained a matter for discussion. The view was expressed that a membership comprising the Trustees, Community Council, Forum Chair and possibly the representatives of other community organisations would provide adequate oversight and accountability by ensuring that the views and feelings of the community, the ultimate beneficiaries of the fund were fully represented.

The main event each year for members is the Annual General Meeting of the organisation. Usually, a 50% majority would be required for any decisions but in some organisations a larger, say 60% majority, will be required for substantive changes such as to the constitution.

The Forum is asked to decide on the following matters in relation to membership of Applecross Community Fund:

1. Does the Forum agree a membership comprising at least:

- ***The Trustees***
- ***The Community Council***
- ***The Chair or nominee of the Forum***

2. Should other community organisations be invited to join as members through their Chairs or nominees?

Trustees

CI offered some general guidance in relation to the appointment of Trustees / Directors and suggested that it was advisable to keep the numbers relatively low to around 5 or 7. A larger Board might be unwieldy, and it might be more difficult to make decisions. There was also the practical challenge of recruitment and retention of members within a small community.

She explained that it would be possible for Trustees to be co-opted in order to take advantage of particular skills or knowledge. When this happens such members usually hold office for a year at a time.

Indemnity insurance for Trustees

DM asked whether the ACF should carry indemnity insurance for the Trustees. CI explained that this was more relevant a consideration in respect of organisations that carried out operations which might generate risk. This was not the case with ACF which would be investing and disbursing funds but not engaging in actual operations or the provision of services.

It was also a relevant consideration if the organisation was constituted as an unincorporated body in which case the Trustees carried personal liability for the debts and actings of the organisation (eg. Sports clubs). This was not the case in relation to ACF which, as a SCIO, would expressly limit the Trustees' financial liability to zero.

The conclusion, after some discussion on the matter, was to not bother with indemnity insurance.

Other matters

Other matters were discussed on which the shadow Trustees would require to make decisions for inclusion in the Constitution such as the number required to constitute a *quorum* at Board meetings, the frequency of meetings, procedures at meetings etc. It was felt that these were detailed, administrative aspects that did not require decisions by the Forum.