



OFFICIAL REPORT  
AITHISG OIFIGEIL

# Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill Committee

Wednesday 7 November 2018

Session 5



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Pàrlamaid na h-Alba

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**Wednesday 7 November 2018**

**CONTENTS**

<b>DECISIONS ON TAKING BUSINESS IN PRIVATE .....</b>	<b>Col. 1</b>
<b>HUTCHESONS' HOSPITAL TRANSFER AND DISSOLUTION (SCOTLAND) BILL: PRELIMINARY STAGE.....</b>	<b>2</b>

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**HUTCHESONS' HOSPITAL TRANSFER AND DISSOLUTION (SCOTLAND) BILL  
COMMITTEE  
2<sup>nd</sup> Meeting 2018, Session 5**

**CONVENER**

\*Kezia Dugdale (Lothian) (Lab)

**DEPUTY CONVENER**

\*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

**COMMITTEE MEMBERS**

\*Maurice Corry (West Scotland) (Con)

Ruth Maguire (Cunninghame South) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

David Dobson (Hutchesons' Hospital)

Alan Eccles (Brodies LLP)

Charles Livingstone (Brodies LLP)

Donald Reid (Mitchells Robertson Ltd)

**CLERK TO THE COMMITTEE**

Vanda Knowles

**LOCATION**

The Sir Alexander Fleming Room (CR3)



## Scottish Parliament

### Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill Committee

Wednesday 7 November 2018

*[The Convener opened the meeting at 10:45]*

#### Decisions on Taking Business in Private

**The Convener (Kezia Dugdale):** Good morning and welcome to the second meeting of the Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill Committee. I remind members present to switch their mobile phones to silent.

We are missing one of our members, Ruth Maguire, who is currently moving amendments at the Local Government and Communities Committee. Depending on how long that takes, she might or might not pop in today, but I just wanted to put on the record why she is not with us.

I should also tell the witnesses that the gentleman to their left controls the microphones, so they do not have to worry about any of the buttons in front of them.

Agenda item 1 is a number of decisions on taking business in private. First, do we agree to take item 3 in private?

**Members indicated agreement.**

**The Convener:** Secondly, do we agree to consider evidence at future meetings in private?

**Members indicated agreement.**

**The Convener:** Thirdly, do we agree to consider key issues for the preliminary stage report in private at future meetings?

**Members indicated agreement.**

### Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill: Preliminary Stage

10:46

**The Convener:** Today we will take evidence from the bill's promoters, the patrons of the Royal Incorporation of Hutchesons' Hospital in the City of Glasgow. I formally welcome David Dobson, member of the executive committee, Hutchesons' Hospital; Donald Reid from Mitchells Robertson Ltd, chamberlains to Hutchesons' Hospital; and from Brodies LLP, Charles Livingstone and Alan Eccles, who are the legal advisers to Hutchesons' Hospital.

We will be asking some questions over the next wee while but, before we do that, can you give the committee a little bit more background about what you do in relation to this bill?

**Alan Eccles (Brodies LLP):** Good morning, convener. I am a partner in the charities team at Brodies, and Charles Livingstone and I have been advising Hutchesons' Hospital on the bill process, particularly the Office of the Scottish Charity Regulator processes for setting up the new charity as recipient body for the assets that are held by the charity in its current format.

**David Dobson (Hutchesons' Hospital):** I was appointed as patron of Hutchesons' Hospital in 2015 by the Trades House of Glasgow, and I have been a member of its executive committee since January 2017.

**Donald Reid (Mitchells Robertson Ltd):** Good morning, convener and members of the committee. I am the chairman of Mitchells Robertson, which enjoys the fancy title of chamberlains to Hutchesons' Hospital. The firm has acted in this capacity for at least 200 years but, despite appearances, I was not present at the inception of our instructions.

I have been involved in acting for the hospital since 1989. Over the years, the demands of governance and administration have steadily increased and have now become unwieldy, which is why I am pleased to be involved in seeking the streamlining that hopefully this bill will, among other things, produce.

**The Convener:** You said that the firm has been acting for the charity for 200 years, but the legislation that we are dealing with comes from 1872.

**Donald Reid:** That is right. However, if you read all the boring stuff that goes with the Hutchesons' Hospital Act 1872, you will see that, prior to the act coming into force, Hutchesons' Hospital had been

in existence under earlier documentation, including a royal charter of 1821.

**Charles Livingstone (Brodies LLP):** I, too, am a partner in Brodies, but I am part of the government regulation and competition team. With Alan Eccles, I am advising the charity on the private bill process. My particular role was to draft the bill—I have already drafted a few private bills and member's bills—and to deal with the consultation and notification exercises.

**The Convener:** Thank you.

I wonder whether David Dobson can explain to the committee why the patrons of the incorporation concluded that a change was needed. Why are we here?

**David Dobson:** To allow the patrons to become more agile in their decision making and governance with regard to the trust. I believe that there are 95 patrons of the trust; we are very lucky if we see 15 of them, but we still have the burden of having to contact all 95 in a proper fashion.

There is also a burden of checking whether the patrons have been informed of meetings and so on. Various people are appointed patrons *ex officio* of other posts; for example, the deacon convener of the Trades House of Glasgow is *ex officio* a patron of Hutchesons' Hospital for the year that he is in post. However, a year gives you enough time to find the paper clips and not very much time to do anything effective.

Another change that will be incorporated is that we will not be naming posts. Instead, we will name bodies such as the Merchants House of Glasgow to nominate people to be patrons. We hope that that will ensure that those who become patrons are not being forced to do so but are willing to be involved in our organisation and will therefore be more active for our benefit.

**The Convener:** That was very helpful, but the question that flows automatically from that is why now. The same arguments could have been made five or 10 years ago. What is the impetus for doing this now?

**Donald Reid:** It is partly financial. The time and effort required simply to manage the extensive paperwork generated by the sheer number of people mean that the cost—which is a management cost rather than a direct cost that you can put your finger on—has in recent years become something that we need to look at. After all, the issue of cost awareness has come to the fore in all organisations.

Apart from the cost issue, it has been borne in upon the patrons and trustees that, perhaps with the passing of the Charities and Trustee Investment (Scotland) Act 2005, there is now an acute need to modernise and streamline the

operation of a charity such as ours, which is not enormous but whose funds are, at the same time, not negligible. We are simply responding to what we perceive to be the expectation of best practice in the charity sector.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I want to challenge what I am hearing a little bit to ensure that we have a proper understanding of this. If we were dealing with a company registered under the Companies Act 1985, we would expect it to communicate with all its shareholders. That is a model that I am seeing here. Similarly, charities registered with OSCR and so on regularly communicate quite actively with the people who have joined as members

Just looking more or less at random through the 1872 act, I see this phrase:

"The Patrons shall have power, when and so long as they see fit".

In other words, the act says directly that, under the present arrangements, the patrons—who are, as has been explained, relatively large in number—are or are able to be directly involved. Are you as a charity not in danger of losing something important by—and I just use this term to provoke you to answer—casting off this cadre of important people in your community who support what Hutchesons' is trying to do?

**David Dobson:** I will respond initially, but others might wish to answer, too.

We are not casting off anybody. If we wanted to be over the top about this, we could say that people have voted with their feet by not attending our annual general meetings or attending to their duties. The model that we are trying to effect has been arrived at over the past several years, so we are just making the law catch up with the practice.

I therefore do not think that we will lose anything. We currently have an active group of patrons who often attend executive committee meetings, and that will be reflected in the equally active group of patrons that will be established as part of the SCIO—which, of course, will be subject to the OSCR scrutiny that you have mentioned.

**Stewart Stevenson:** We need to move on, but I just want to come back on that briefly. Does the fact that such a large proportion of the current patrons have become disconnected from the charity's work itself not indicate that the time might be up for the charity and that arrangements other than perpetuating it should be considered?

**Donald Reid:** The short answer is no. The charity's work, particularly its work with the needy elderly people whom it supports, is by no means out of date or moribund. On the contrary, the people who are supported by it are very grateful. The flood of letters of gratitude that regularly

comes in is a great encouragement to the patrons, who realise that their work is greatly appreciated by the people who benefit from it. Any body that comprises a large number of people will have drivers and passengers, and that is the case here.

I should say that I am not using the term “passengers” pejoratively—it is just that in a big group it is inevitable that there are some who will be less involved than others in the running of it. The passengers—if I can put it that way—are themselves very heavily committed individuals in their own fields from which, ex officio, they have been appointed, without their making the choice and without even their knowledge until they finally arrive. All of them cannot be expected to be as involved as the few who choose to make Hutchesons’ Hospital one of their special interests. It has been to the hospital’s great benefit that a number of these ex officio individuals have chosen to do things in that way.

There have always been a few councillors of the city of Glasgow who have taken the hospital very seriously; indeed, quite a number of our preceptors over the past 30 years have been councillors. However, this whole thing is being driven as much by the council as by the administration of Hutchesons’ Hospital, because it sees how unwieldy it is for all the councillors to be trustees. Not all of them—in fact, only a few of them—can be as focused on the hospital as ideally we would like. For those reasons, the answer to your question is no.

**Stewart Stevenson:** Thank you. I think that it was helpful to get all of that on the record, convener.

**The Convener:** Moving on, will you tell us a bit more about the constraints that the 1872 act places on you? What might you be able to do when you become a Scottish charitable incorporated organisation that you cannot do now?

**Donald Reid:** We can do less under the 1872 act. What is required by the 1872 act is being done. There is not anything that needs to be done that is not currently being done; rather, the cumbersome nature of the administration is the problem. Becoming a SCIO certainly affords—to use Mr Dobson’s word—greater agility to deal with anything that needs, in conventional terms, an adjustment of the purposes or the constitution of the charity. It will be easier under the banner of OSCR to adjust to meet needs as they develop.

Our hands are not tied behind our backs at the moment; it is just that moving is like being in a spacesuit rather than in athletic gear. However, what needs to be done gets done.

11:00

**The Convener:** That is helpful. Do you have any intention of fundamentally changing the nature of the organisation? Is this basically a tidying-up exercise?

**Donald Reid:** It is a tidying-up exercise, but that is stating it too minimally. It is more than that. Governance is more than simply being tidier about the way that you go about things. It is about improving the link between the trustees and their responsibilities, so that trustees are all more positively involved in the running of the charity and the decisions that it has to make.

**Charles Livingstone:** We could also say that there is a great degree of connection between the purposes of the SCIO in its constitution and what the 1872 act requires. The purposes are expressed in more modern terms.

**The Convener:** What do you mean by “SCIO”?

**Charles Livingstone:** It means Scottish charitable incorporated organisation.

Alan Eccles is probably best placed to talk about this, but the constitution of the SCIO mirrors not identically but in its essence the current purposes and activities of the charity. It is also fair to say that the current nature of the charity as a corporation established by statute does not really lend itself to modern financial management of the sort that the hospital would ideally do in managing its investments and that sort of thing. I defer to Alan Eccles on the details of that.

**The Convener:** Will you say a bit more about that? That was wonderful lawyer speak. What do you mean about managing financial resources? Is it about borrowing or about loans?

**Charles Livingstone:** I will defer to Alan Eccles on SCIOs.

**Alan Eccles:** A SCIO provides charities with a modern structure. The SCIO came in in 2011 and it is now far and away the most popular format for new charities. It gives charities and their trustees all the powers that they need to carry out their purposes. When trusts and organisations like the hospital are set up under an act of Parliament, there are certain restrictions in the structure that mean, in some cases, that they do not have the same flexibility to carry out their purposes. The SCIO structure creates flexibility that modern charities are able to take advantage of.

In addition—this is very important—this is about streamlining the governance and getting it right, and getting the best out of the organisations that have, over the years, offered up the trustees. The purposes are being slightly modernised, but they are not being changed.

**The Convener:** I understand that, but I asked specifically about finances. Is there a specific element that will change in the financial structure?

**Alan Eccles:** It gives wider and more flexible investment powers. A SCIO has the power to do anything that it chooses, as long as that furthers the purposes of the charity. As currently constituted, the charity does not get the complete width of investment powers. Until the SCIO and the 2005 act, a lot of charitable organisations had restrictions on how they could best invest. In a way, that has, in some cases, put charities at a disadvantage in terms of generating a return for their purposes.

**The Convener:** I am just going to push you a little bit further on that. The whole point of this process is to clearly evidence to Parliament why the bill is necessary. It would be helpful if we could understand very specifically what you could do as a SCIO that you currently cannot do, in the context of investment.

**Alan Eccles:** We could invest in anything that furthers the charity's purposes. If an investment manager thought that it was a good idea to invest in a particular way, we could do that as long as the trustees thought that that was right for the charity. In the current format, we do not get the same flexibility and there are more restrictions on what we can do and invest in.

**The Convener:** That is what I was looking for. Thank you.

**Alan Eccles:** The other side of it is changing the composition of the trustee group, which is perhaps the most important bit.

**Maurice Corry (West Scotland) (Con):** Are you saying that you will be able to get, bluntly, a better return on investment under the proposals that you are considering? Will that increase the bottom line that is given out to good causes?

**Alan Eccles:** If there was investment advice that suggested investing in a particular way, and that was right for the charity, it could take that up as a SCIO. There are some restrictions when a charity is incorporated by an act of Parliament.

Yes, becoming a SCIO has the potential to create a better return for the charity, but perhaps the main driver is the quite unwieldy and cumbersome trustee group that exists at the moment. That is a key driver regarding the governance benefits of becoming a SCIO.

**Maurice Corry:** That is fine, but are we looking at changes that might lead to restrictions or openings regarding what we will call "green policies" such as those that the Church of England recently considered with regard to its investments? Is there any link to that sort of thing? Will the change avoid that?

**Alan Eccles:** No. In many ways it will be quite the opposite. I often think of how charities invest as being purposes led. If you are entering into the SCIO regime, where your powers are based on what is best for and what furthers your purposes, it means that you must properly take into account those ethical and social considerations and ensure that your investments tie in with your purposes.

**Stewart Stevenson:** Section 4 of the 1872 act says:

"The Patrons shall have power to apply the remainder of the revenues, and a part, not exceeding one-third of the capital, of the Hospital"

et cetera. Is that one the constraints under the 1872 act? I choose that as only one example of what will be relieved if you move to the SCIO environment.

**Alan Eccles:** Yes. The SCIO structure respects what there has been in the past, but it is much more permissive. Rather than putting limits on what they are doing, it enables the trustees to do things.

**The Convener:** That is really helpful. I am sorry for the interrogation but you will understand that this is all about aiding the process, and it is what we are here to do.

I have some more questions for David Dobson and Donald Reid about the organisation's current activities. For the purposes of the record, can you tell us a bit more about what you actually do?

**David Dobson:** We currently give grants or pensions to a group of 20 to 30 needy people in Glasgow. They also get the benefit of a social worker, whom we employ on a part-time basis and who visits all our grantees and makes sure that everything is going well with them. That is one main thrust of the purposes of the trust, and it will be maintained absolutely.

The other broad purpose of the trust is the advancement of education in Glasgow. Over the years, that has become established as being that 40 per cent of the trust's net income goes to another charity, namely the Governors of Hutchesons' Educational Trust. We have no intention of changing that, and that will be within the authority granted by the new SCIO, should we start operating in that way. Becoming a SCIO could also free up the trust's remit to do other things in the education field.

The 1872 act talks about schools; in fact, it predates the arrival of what became known as Hutchesons' Girls' Grammar School. Prior to the 1872 act, only boys were educated. It will be a bit more than tidying up the statute book; it will remove from us the power to run schools, which we have at the moment but do not wish to use.



Running schools is not in any future that any of us can envisage for Hutchesons' Hospital.

**The Convener:** You have made it quite clear that you do not see any of the current activities materially changing. I will push you a bit further on that. Is there any sense that anybody who is in receipt of the benefits of your organisation will lose out as a consequence of the change?

**David Dobson:** None whatsoever. Indeed, there has been communication with all the grantees to explain the situation that we are trying to advance. I think that that is recorded in the information that has been passed to the committee; I just mention it to clarify that there is no thought of there being any change.

**The Convener:** What you are essentially doing is streamlining the organisation and making it much easier to manage. We would like to hear a bit more about how you plan to manage it appropriately, given such a material change in its operation. Who will manage that?

**Donald Reid:** Me.

**The Convener:** It is about freeing up your time, so you will have a bit less paperwork and a bit more focus on the objectives.

**Donald Reid:** Yes, and bit less in fees to me, I am afraid.

**The Convener:** Fees?

**Donald Reid:** I will get paid less.

**The Convener:** I think that this is the first time that somebody has come to the Scottish Parliament and argued for less money. Tell us a bit more about that.

**Donald Reid:** At the moment, the hospital charity operates with an enormous group of trustees that every year empowers an executive committee of a smaller number—approximately seven or eight—to run the show. That committee meets quarterly and makes decisions about the investments. It also hears reports on the various beneficiaries who receive grants and reports from the educational trust on how the funds that are directed to it are being deployed in its bursary fund to benefit students who would not otherwise be able to be at the school. In the case of the beneficiaries, there is a lot of quite important personal information that has to be made available so that the reports can be meaningful. There has to be very careful management of that personal data, and it is all managed in accordance with the Data Protection Act 1998, the general data protection regulation and so on.

In future, we will have a group of committed trustees who will be informed to the same extent as the current executive committee members are. However, we hope that, as they will choose to be

appointed, rather than simply having trustee status imposed on them as a result of their holding a different office, the overall body of commitment and understanding will be broader and there will be a greater ability thereafter to look at innovations that might be suggested. At the moment, because of the sheer number of trustees, it is more just a case of ticking over and doing what needs to be done, because involving a much larger body and getting it to consider major decisions is much more difficult.

**The Convener:** Thank you for that.

**Maurice Corry:** You mentioned the enormous number of trustees. How many are we talking about?

**Donald Reid:** There are 95.

**Maurice Corry:** Why did that happen?

**Donald Reid:** It is in the 1872 act.

**Charles Livingstone:** They are ex officio appointments. Every elected member of Glasgow City Council is an ex officio trustee of the hospital. As has been mentioned already, part of the driver for the change is the council's desire to rationalise the various offices to which councillors are automatically appointed, whether or not they even know about it, as Donald Reid said.

**Maurice Corry:** Thank you.

**Stewart Stevenson:** We have talked a fair bit about why a move to a different legal basis and away from 1872 act is necessary—we have talked about capital, for example. Is there anything that has not come up in the questions that we have asked so far that adds to the reasons why we need to legislate? The answer might be no; indeed, I see that it is no. That is fine. I am quite content with that, as far as it goes.

The promoter's memorandum talks about alternatives. I have had a look at section 42 of the 2005 act, and I can see some of the issues there. However, there is also section 39 of that act, which I have in front of me and which certainly appears to provide an alternative way of reorganising. Although there are some complexities associated with the way in which it is expressed, it is clearly an alternative way that you could have proceeded. To what extent was that alternative considered, and why, if it was considered, did you dismiss it?

11:15

**Charles Livingstone:** That is not an option for a charity that is incorporated by an act of Parliament, because the charity does not have the ability to reorganise its own constitution. I am afraid that I do not have the 2005 act—

**Stewart Stevenson:** Let me take you to section 42 of the 2005 act. Section 42(3) says:

“A ‘reorganisation scheme’ is a scheme for—

(a) variation of the constitution of the charity (whether or not in relation to its purposes),

(b) transfer of the property (after satisfaction of any liabilities) to another charity (whether or not involving a change to the purposes of the other charity), or

(c) amalgamation of the charity with another charity.”

Section 42(5) says:

“Sections 39 and 40 do not apply to any charity constituted under a Royal charter or warrant or under any enactment.”

I think that that is what you are hanging your hat on. However, section 42(6) goes on to say:

“But, despite subsection (5)—

the enactment provision—

those sections do apply to an endowment if its governing body is a charity.”

I am not a lawyer, but my reading of section 42(6) is that it appears that you would be caught by it. Although you are established by enactment, given that your governing body is de facto—if not under current legislation—a charity, you have the power to reorganise by that means. I would be interested to hear your observations on that—without getting me to the point at which I, as a layperson, become so baffled that I dissolve.

**Charles Livingstone:** I will do my best. Section 42(5) of the 2005 act disapplies sections 39 and 40 to any charity constituted under an enactment, and there is an exception for an endowment if its governing body is a charity. The difficulty with section 42 is that the drafting reflects the way in which educational endowments are spoken about. We mentioned the Hutchesons’ Educational Trust, which is an example of where a scheme was made. There have been four or five different pieces of educational legislation under which endowments could be placed into the hands of a governing body. That legislation creates a clear distinction between the concept of an endowment and the concept of a governing body. That distinction does not exist in relation to the hospital because it is not possible to identify one thing that is an endowment and one thing that is a governing body.

It is probably impossible to explain this without getting very technical, but I can certainly say that OSCR itself also grapples with this issue. The summary of OSCR’s response to our consultation letter is noted in the promoter’s memorandum, but I will read out the relevant passage for the record:

“I note that we were previously asked to consider what options were open to the charity trustees of the incorporation to achieve the modernisation they intend, and

in particular whether the reorganisation provisions of the Charities and Trustee Investment (Scotland) Act 2005 would be available to them. Our view was that in order for the incorporation of Hutchesons’ Hospital to be able to rely on the reorganisation provisions it must establish that the charity holds property that qualifies as an endowment. The drafting of section 42 of the 2005 act on this point is ambiguous and its interpretation is difficult. Indeed, we have recommended to ministers that it should be amended. Therefore, it is understandable that the charity trustees have chosen to promote the private bill and we have no particular comment on—and certainly no objection in principle to—the proposal.”

It is not necessarily the case that we can say with certainty that we fall outside, or indeed inside, section 42(6). The difficulty is that the interpretation of section 42(6) has never been tested in court, so the reorganisation of a body that relied on that provision would be vulnerable to a challenge. As advisers, we are not able to say to a charity in the hospital’s position, “You can definitely rely on that.” Although the prospect of such a reorganisation being challenged and struck down is possibly quite low, the impact of such a result would be almost impossible to deal with. That is why—with the probable exception of the educational endowments that I mentioned, which fit more neatly within the legislation—we have not been able to advise any charities established under an act of Parliament that they can use the reorganisation provisions with absolute confidence.

**Stewart Stevenson:** I find that relatively compelling. However, I have looked at the 1872 act. In essence, the source of funding is mortifications, which I understand are a particular form of testamentary provision. Do they constitute endowments to the charity in legal terms?

**Charles Livingstone:** The property may constitute an endowment, but there is an additional difficulty in unpicking section 42(6), which says that the sections apply to an endowment if its governing body is a charity. If we are dealing with an endowment in this case, that endowment is the collection of property and assets. The 2005 act does not say that the reorganisation provisions can be applied to the governing body; it says they can be applied to the endowment. That is one of the reasons why it is, in OSCR’s words,

“ambiguous and its interpretation is difficult.”

**Stewart Stevenson:** I am going to rely on what OSCR is saying—which seems a perfectly proper place to go—and equally on the uncertainty of that option compared with the one that you are now pursuing, so that is helpful.

I have a couple of questions about the patrons, which we can probably deal with fairly briefly. We have heard that only a small proportion of the patrons actively involve themselves in

Hutchesons' Hospital. Given that the issue that we are discussing is fundamental, are you surprised that such a small number have got involved in the reorganisation?

**Donald Reid:** We are no more surprised about the commitment of the totality of the trustees to the issue than about the general commitment over the years. There have always been a few who are committed and a vast majority who, for the reasons that I sought to explain earlier, do not participate to any degree.

The democracy of the decision to proceed to seek to promote the bill was fully observed in the holding of the relevant meetings, in giving notice and so on. None of the trustees had any issues to raise on its wisdom. No doubt they were guided by the fact that they knew that there was an executive committee on which they had good reason to be able to rely.

**Stewart Stevenson:** I am going to be extremely picky. Are you using the word "trustees" as a surrogate for and equivalent to "patrons"?

**Donald Reid:** Yes.

**Stewart Stevenson:** That is fine. I just wanted to be clear that we were not talking about something different. Did any of the people who did not attend the meeting otherwise provide any feedback?

**Donald Reid:** I think I am right to say that none did.

**Stewart Stevenson:** That is fine.

**Maurice Corry:** You answered the question about the 95 people who have been involved under the current situation. How many organisations and people did you write to in relation to the consultation? Was it more than that number? If so, who were they?

**Charles Livingstone:** The consultation took place in two phases. There were discussions with the various bodies that are involved in appointing patrons to the charity or whose members are ex officio patrons, so there were discussions with Glasgow City Council, Merchants House of Glasgow, Trades House of Glasgow and the Presbytery of Glasgow. The reason for the inclusion of the Presbytery of Glasgow is that ministers of various parishes, like councillors, are appointed ex officio, whether or not they want to be or know about it. There were also discussions with Hutchesons' Educational Trust, as a significant beneficiary of the charity. Those discussions took place in the phase of developing the proposals and ensuring that people were on board with them.

At the formal stage, in the pre-introduction consultation, letters were sent to the Governors of

Hutchesons' Educational Trust. As David Dobson mentioned, everybody who is currently in receipt of a pension granted by the incorporation received a letter to advise them of the proposal. We wrote to Glasgow City Council, Merchants House, Trades House, the Presbytery of Glasgow and the Archdiocese of Glasgow, because those bodies either have people appointed to the existing trustee body or, under the SCIO constitution, have the ability—but not the obligation—to appoint trustees to the SCIO. We also wrote to OSCR.

**Maurice Corry:** Do you feel that you got a pretty poor response?

**Charles Livingstone:** We received a response from Glasgow City Council, which was supportive for the reason that I mentioned: its interest in rationalising the obligations on its members. We received a response from Trades House of Glasgow, which was supportive, and a response from OSCR, which I have read out in part. There had already been discussions with the educational trust, so we did not necessarily expect a response to our formal letter.

We did not expect responses from anybody in receipt of a pension. Although the letter that was sent out invited their views, it was principally to give them comfort that, as we discussed earlier, they should not expect anything to change. Merchants House had been closely involved with the discussions as well. I think it is fair to say that the Merchants House and Trades House patrons are among the more active on the charity.

For those reasons, we did not necessarily expect more replies than we received to the letters. Donald Reid might want to say something about the earlier engagement.

**Donald Reid:** I had prior discussions with the Glasgow presbytery in order to ensure that I was up to date with all the various amalgamations of churches that have taken place over the past 150 years within the Glasgow presbytery area, and that I was addressing as a patron the correct minister—who, in most cases, is now the minister of several amalgamated parishes, as distinct from the way that it was before.

The Glasgow presbytery—the office with which I was communicating—was advised of the proposal, and it indicated informally that it would approve it and would endeavour to participate in appointing relevant patrons or trustees come the day, if it happened. Given that experience, I am not surprised that the presbytery did not offer a formal response to the intimation when it was made, because it probably felt that it had already responded.

It was not a poor response. It was a good response. If a proposal meets with favour and receives no objections, that is a good response.

**Maurice Corry:** I understand that. I am just thinking about the sheer numbers. What attempt was made by the committee and so on to follow the matter up with those who did not reply? Mr Reid, you mentioned talking to the presbytery at length and your understanding from that. Was any attempt made to say, "We're sorry you haven't replied. Do you have any further objection before we finally close this?"

**Donald Reid:** No.

**Charles Livingstone:** No.

**Maurice Corry:** Why not?

**Charles Livingstone:** We had engaged with the key bodies from which we would expect engagement, based on the experience of the incorporation as to who was and was not engaged.

I add that, although they were not consultation letters because they went out to trustees rather than to external bodies, there were also letters that went out to everybody who was a trustee of the incorporation as an update, reminding them of the agreement at the previous annual meeting to pursue a private bill and telling them that we had reached the stage where we were going to introduce the bill. That was pre-introduction as well.

11:30

**Maurice Corry:** So you categorically feel that there have been no objections at all—not even a sniff of one.

**Donald Reid:** Categorically.

**Maurice Corry:** Thank you.

**The Convener:** I will ask a few wrap-up questions and then offer you an opportunity to tell us anything that you think we have not covered.

I take you back to 1821, which is where we started. The explanatory notes for the bill say:

"the charity was initially built up in the 17th century by way of multiple deeds of mortification and similar deeds, some of which are written in old Scots or otherwise archaic language, and in particular the possibility that there may be still-valid documents of which the current patrons are unaware".

I would like to know what you think the chances are of old documents turning up that might scupper your efforts.

**Donald Reid:** I can speak to that because, of the three lawyers who are before you, I am undoubtedly the oldest, and in my personal experience of more than 30 years I have turned black going through tin boxes full of stuff, looking for anything that might be relevant and not finding it. This stuff is in the archives of my firm, which I

note as a wee boast is the oldest in Glasgow. Some of its archives go way back, deep into the 19th century, with one or two interesting documents that I found dating from the 18th century or even earlier. There is nothing there. It is such a remote possibility that we can discount it to nil.

**The Convener:** So there is no chance that a document will be found that might challenge the organisation's objectives.

**Donald Reid:** I do not think so, convener.

**Charles Livingstone:** From a legal perspective, the reason why that is mentioned in the explanatory notes is to explain why the bill takes a belt-and-braces, ultra-cautious approach to capturing everything that might have a connection with the incorporation and that we would want to go across to the SCIO.

On the background, the royal charter is from 1821 and the various deeds of mortification and other legacies date back as far as 1639. It is extremely unlikely that anything will come about, but we did not want the bill to leave any prospect of a legal or ownership lacuna in respect of any property, obligation or anything like that. The explanation is given to explain why the bill is a bit more extensive and has more subsections than the legislation on other charities that were constituted under acts of Parliament and have looked to reconstitute in other forms.

It is because we are dealing with things that are so historic and came from so many sources that we do not want to allow even the possibility of something being left behind. In the event that something appears, the eventual act will take care of that and the SCIO will be the responsible body to deal with it. It will not undermine anything that the act will do. The bill is intended to protect against that eventuality.

**The Convener:** You are saying that the bill has been drafted in such a way as to scoop up anything that might arrive and to provide a mechanism to deal with that event.

**Charles Livingstone:** Exactly. The approach is to leave nothing behind.

**The Convener:** Thank you. Stewart Stevenson has a supplementary question.

**Stewart Stevenson:** Section 26 of the 1872 act looks like a standard legal catch-all. I invite you to agree that the intention is basically to catch everything that went before. It mentions

"All property, heritable and moveable, real and personal, wheresoever situated at the time of passing of this act, and all conveyances, assignments"

and a long list of other things

“for the use or behoof of, or connected with the hospital, or of the before-mentioned mortifications, charities or bequests, whether the same are held absolutely or in security”.

It really is the most comprehensive of legal lists that scoops up everything, whether known about in 1872 or thereafter or not. That could be something on which we rely to catch all the things that are unknown. Is that the intention of that bit of drafting?

**Charles Livingstone:** Yes. If the bill was not enacted and something cropped up from pre-1872, we would look to rely on section 26 of the 1872 act to confirm that it was held in the incorporation as it is currently constituted. The bill seeks to apply a similar approach now, using more modern and—we hope—more understandable drafting. We hope that we will avoid not only any issues in respect of things pre-1872, but any issue in respect of anything done between 1872 and the point at which the bill is enacted, if indeed it is.

**Stewart Stevenson:** The bill that you have brought to us does not abolish the 1872 act—or does it?

**Charles Livingstone:** It does repeal it.

**Stewart Stevenson:** I have just looked at it very quickly and I have left my glasses somewhere else.

**Charles Livingstone:** Section 2(1) says the transferor is dissolved and section 2(2) says that the 1872 act is repealed.

**Stewart Stevenson:** Oh, yes. It is because section 2(2) is at the top of the page that I did not see it. My apologies.

**The Convener:** Thank you. Your evidence has been pretty comprehensive. Is there anything that you would like to put on the record that we have not given you an opportunity to say?

**Donald Reid:** On behalf of the hospital, given my role in it, I thank the committee for its careful addressing of the issues and for the opportunity to respond to your questions.

**The Convener:** Thank you very much for your evidence this morning. We wish you well.

That concludes the public part of our business today. Our next meeting will be on Wednesday 28 November.

11:36

*Meeting continued in private until 11:45.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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