



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

URE ELDER FUND TRANSFER AND DISSOLUTION BILL COMMITTEE

Tuesday 19 January 2010

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URE ELDER FUND TRANSFER AND DISSOLUTION BILL COMMITTEE
1st Meeting 2010, Session 3

CONVENER

*David Stewart (Highlands and Islands) (Lab)

DEPUTY CONVENER

*Nanette Milne (North East Scotland) (Con)

COMMITTEE MEMBERS

*Shirley-Anne Somerville (Lothians) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Alan Eccles (Maclay Murray & Spens)

Nancy Fancott (Scottish Council for Voluntary Organisations)

Dr Joan McAlpine (Ure Elder Fund for Indigent Widow Ladies)

LOCATION

Committee Room 4

Scottish Parliament

Ure Elder Fund Transfer and Dissolution Bill Committee

Tuesday 19 January 2010

[The Convener opened the meeting at 10:35]

Decision on Taking Business in Private

The Convener (David Stewart): Good morning, ladies and gentlemen, and welcome to the committee's first meeting in 2010. I remind members and everyone present to switch off mobile phones and pagers.

The first item is to decide whether to take in private item 3, in which we will consider the written evidence and the evidence that we will hear this morning and take some initial decisions on what to include in our report to Parliament. Does the committee agree to take that item in private?

Members indicated agreement.

Ure Elder Fund Transfer and Dissolution Bill: Preliminary Stage

10:36

The Convener: Agenda item 2 is our preliminary stage consideration of the Ure Elder Fund Transfer and Dissolution Bill. It is a great pleasure to welcome to the meeting Dr Joan McAlpine, a trustee of the fund, and Alan Eccles from Maclay Murray & Spens, the trustee's legal advisers.

We will move straight to questions. In general terms, what does the bill do? Why is a private bill necessary to reorganise the Ure Elder Fund for Indigent Widow Ladies?

Alan Eccles (Maclay Murray & Spens): The current fund was established in 1906 by an act of Parliament stipulating that trustees could give each beneficiary only £25 per annum. At the moment, the trustees do not have the ability to increase that sum and feel that in a modern context £25 per beneficiary per annum does not give them the scope to provide the benefit that they would wish to provide. As a result, the bill seeks to enable the fund in its statutory form to be transferred to a new charitable deed of trust, which would be set out in a modern style and approved by the Office of the Scottish Charity Regulator and Her Majesty's Revenue and Customs.

The Convener: Do you have anything to add, Dr McAlpine?

Dr Joan McAlpine (Ure Elder Fund for Indigent Widow Ladies): Not really, except to say that we want to broaden the range of possible beneficiaries and remove any restriction on the benefit. Moreover, the bill will allow us more easily to modify the trust's provisions.

The Convener: Why was the fund originally set up under an act of Parliament?

Dr McAlpine: Mrs Elder's will states that if her trustees

"find any difficulty in drawing and executing the Deed or Deeds of Mortification before mentioned or if they think it would be conducive towards the proper establishment and working of 'The Ure Elder Fund for Indigent Widow Ladies'—

as it was called—

"then and in either of these events, or if my Trustees shall otherwise deem it expedient for any reason whatever I authorise my Trustees to apply for and obtain an Act of Parliament for the constitution and regulation of the Fund and to pay the expenses of such Act out of the Residue of my estate".

That is where it came from.

The Convener: Thank you. Do you have anything to add, Mr Eccles?

Alan Eccles: It is slightly unfortunate that the *Hansard* report from 1906 does not mention why the original bill was introduced and enacted—it went through all of its stages on the nod. I do not know whether it was in vogue at the time to set up some charities under an act of Parliament, but the reasons for establishing the fund in that way are not clear.

The Convener: We are going back a long way in time, so it is probably difficult for you to tell whether it was the culture of the time to use bills to legislate for charities. Your point is that, basically, we do not know the full background.

Alan Eccles: Yes, it is not entirely clear.

The Convener: What is the current value of assets, the average income and the average annual spend of the fund?

Alan Eccles: As of yesterday, the fund's share portfolio was valued at approximately £180,000, and there is approximately £20,000 of cash. The annual income is usually in the region of £11,000. In the past couple of years, the trustees have distributed to beneficiaries between £4,000 and £4,500 by way of grants.

The Convener: To go back to Dr McAlpine's point, presumably grants are restricted to £25. Is that the constraint to which you are currently subject?

Dr McAlpine: We have modified matters slightly by giving people a Christmas bonus—like a Christmas present—which enables us to give them more money. Twenty-five pounds is not very much. It was an awful lot—equivalent to more than £2,000 today—when Mrs Elder provided for it to be made available as a gift to the then beneficiaries, but it is nothing now.

The Convener: How do you select, interview and make decisions about who is to receive funds? There is a geographic constraint—Glasgow and Govan have been mentioned—and, presumably, there is still the widowed and indigent element. Do you advertise the fact that the fund is available and ask people to apply?

Dr McAlpine: We have advertised in general practitioners' surgeries, through social workers and in the charity manuals that lawyers use to point out to people charities to which they might apply.

The Convener: So you advertise through a variety of organisations. Individuals can also apply.

Dr McAlpine: Of course.

The Convener: Your trustees then make decisions on the applications that are in front of them.

Dr McAlpine: That is correct.

Shirley-Anne Somerville (Lothians) (SNP): I will go through some points in the promoter's memorandum, starting with paragraph 8. It states that the trustees believe that the current provisions

"are outdated and affect the ability of the trustees to provide genuine charitable benefit."

We have already spoken about the £25 limit and how that restricts some of the work that you are doing. Can you indicate in more detail how the current provisions are unsuitable and how the changes that you are looking to make would improve the operation of the fund?

Alan Eccles: The primary issue is the £25 limit. Over time, the informal approach has been taken of instituting a bonus system to provide the support that the trustees would wish to provide, but the situation needs to be regularised to enable the fund to conform to what is expected of a modern charity that is regulated by OSCR. As well as getting rid of the £25 limit, the bill provides for a clearer set of powers and responsibilities in the new trust deed. It should be easier in future for the trustees to understand what they are supposed to do and what responsibilities they have. If changes need to be made in future, the trust deed, rather than requiring to be amended by legislation, can go through OSCR's processes, which are open to every charity in Scotland except for those that are established by Parliament. That will put the trust on an equal footing with trusts of a similar nature that might be established today.

10:45

Shirley-Anne Somerville: Dr McAlpine, do you have anything to add?

Dr McAlpine: Not really. We are restricted to giving to widows in need. We thought that it might be better if we were able to provide them with grants for the advancement of education, for example. A widow with young children might need help with that or with illness. If the fund were not as restrictive as it is at the moment, we could vary the amounts that we provide. People would not necessarily be provided with £50 for ever, but they could receive additional assistance if they had an illness or, especially, a family—not a family to support them, but young children to look after. There are still quite a lot of young widows who could do with such assistance, even if only for a period.

Shirley-Anne Somerville: Paragraph 14 of the memorandum states that the trustees "examined alternative legal structures". Can you provide the

committee with details of those structures? Why were they considered not appropriate? What advantages will changing the fund to a non-statutory charitable trust provide?

Alan Eccles: When we embarked on this process, we looked at the classic legal entities that are used for charities that are set up today—a deed of trust and a company limited by guarantee—and at the Scottish charitable incorporated organisation, a new legal vehicle that is not yet available but for which framework legislation exists. We decided against setting up a company limited by guarantee, partly to ensure simplicity of administration. We wanted to be regulated by OSCR, rather than subject to dual regulation by OSCR and Companies House, which would bring the whole of company law into the administration of the fund.

We cannot be a SCIO yet, but the trustees wanted to push ahead with the changes and did not want to wait. A SCIO might not have been wholly appropriate in this type of situation. Essentially, we are dealing with a trust fund with a share portfolio and cash. If you were advising someone on setting up a new charity of that nature, with such assets, a trust deed would be the obvious approach to take.

Shirley-Anne Somerville: What will be the process for and timing of the transfer of the fund to the trust? How will the process work in practice?

Alan Eccles: The bill as drafted provides for the act to come into force two months after royal assent. We have spoken to OSCR about the moment of transfer. When the two months have passed and the moment of transfer happens, OSCR will update its systems to show the new name and to indicate that there will be a deed of trust, rather than a statutory body. At the same time, we will make an internal change to transfer the cash from the statutory body to the trust fund. Similarly, the designation of the investments will change from the statutory version of the fund to the deed of trust. Implementing the transfer is a fairly simple, mechanical process.

Shirley-Anne Somerville: Paragraph 29 of the promoter's memorandum states that the trust will "be afforded modern investment powers".

What do you mean by that term? What controls will be placed on those new powers?

Alan Eccles: The controls are important in the drafting of the trust deed. The deed provides for powers for the trustees to invest as they wish but, more important, they have obligations to take professional advice and to consider that when making investment decisions. That provides an extra layer of control that is not included in the default legislation relating to investment by

trustees. The deed gives the trustees express powers that are written clearly in a modern context, but sets out again their responsibilities and the advice that they must take when making investment decisions.

Shirley-Anne Somerville: So you feel that the proposed changes will make it easier for the trustees not only to carry out their work, but to do so in a more transparent way and to make the correct decisions timeously.

Alan Eccles: Yes—that is the intention.

Nanette Milne (North East Scotland) (Con): Good morning. The committee appreciates that, in the past, it has been difficult to identify potential beneficiaries, with the result that the spend has been comparatively small so far. Do the trustees feel that the trust will be sustainable if a greater number of beneficiaries receive larger grants in the future? What thought has been given to safeguarding the viability of the trust?

Dr McAlpine: We thought that we could probably advertise not just in charity publications but in surgeries and in the social work department, and that we could widen the scope of the fund. Instead of saying just that it was available to widows in need, we could specify additional factors that could enable people to qualify.

An example of that might be someone who had a wish to promote education, as Mrs Elder promoted education in a very big way. The committee will know from its note that she did a lot for women's education, particularly their medical education. In addition, she founded the first chair of naval architecture in the world in Glasgow and looked after shipyard apprentices, encouraging them to do night classes and so on. We could use the fund to help a widow with the further education of a son or a daughter whom they felt should not go straight out to work with no real view. That would be a new departure. Rather than just giving money to a widow, we could look for someone who was in some difficulty. It need not be a young child; it could be an older dependent who needed extra money for their education.

Nanette Milne: Do you think that the funds are adequate to sustain an increased number of beneficiaries in the long term?

Dr McAlpine: It could be a temporary grant—it does not need to be a lifelong thing. We will find out what we can do only by trying such an approach. We have not been able to do such things hitherto.

An example of someone in straitened circumstances who could do with something extra and to whom such a grant would be of advantage would be someone with a young family who had a temporary disability, which meant that they could

not work for a period of time. I agree that the amount of money that is available in the fund is not vast, and it has suffered from the recent drop in the investment market. Here's hoping that it will come up again.

Broadening accessibility to the fund would enable us to do more than just help widows. Part of the trustees' work was to visit beneficiaries. I have visited people to ensure that they were really worthy and that what they had written down about their circumstances was correct, because people can be extremely deceptive. Visiting beneficiaries helps to maintain an awareness of what is really going on as opposed to what they have written on an application sheet is going on.

Nanette Milne: I presume that in future you will just have to cut your cloth according to the availability of funds.

Dr McAlpine: Exactly.

Nanette Milne: Do you have anything to add to that, Mr Eccles?

Alan Eccles: When it comes to the viability of the trust, the issue is not whether there is a sufficiency of funds; it is ensuring that there is a sufficiency of beneficiaries and making the terms of the trust sufficiently attractive to people who might wish to apply to benefit from it. Over time, the number of beneficiaries has dwindled. It is hoped that removing the £25 restriction and modernising the purposes will make it possible for the trustees to market the benefit of the trust to those who need what it has to offer. With the current restrictions, it is difficult to do that. Doctors and local councillors are the sort of people who are well placed to be aware of what the trust could do, but the restrictions that currently apply make such work difficult.

Nanette Milne: Will the reorganisation of the fund aid public scrutiny of the trust and, if so, how?

Alan Eccles: One reason why the fund was established by an act of Parliament in 1906 might have been to aid public scrutiny. That meant that the fund was public and identifiable, rather than just being mentioned in a private document somewhere. Now that we have OSCR, it performs public scrutiny through its annual scrutiny of bodies' accounts. Charities legislation has meant that the public scrutiny role has been given to a well-respected body in the form of OSCR. If public scrutiny was one reason why the fund was established by an act of Parliament, that requirement has probably fallen away with OSCR's creation.

Nanette Milne: You mentioned that people have accessed the fund as a result of your advertising it, and you have touched on one or two other ways in which they have done so. Is it the

case that, in general, people have come to you through advertisement, or did you use other means of identifying beneficiaries?

Dr McAlpine: Beneficiaries were often identified by lawyers who were trustees. They often knew someone who could benefit from even a small amount of money for a period of time. It is always difficult to get to the right people. As I said, we advertised in the charity lists, but that did not produce much interest. If someone is making a will, a lawyer often picks his own favourite charity—he goes to a charity that he knows about—to increase the amount of money that it will receive. Similarly, a lawyer will go to a charity that they know about if they think that they know someone who could benefit from it.

We could not say that people would get £25—nowadays, people would not bother to fill in a form to get that. People have come to us in diverse ways, but they never knew what they would get. It was a case of, "Let's try it and see."

Nanette Milne: Have beneficiaries been consulted on the changes that are about to be made? What sort of comments have they made?

Alan Eccles: In the consultation that we held before we introduced the bill, we contacted beneficiaries, partly to find out how they had found out about the fund, because that interested us. Most of them responded that they had done so through direct contact with a trustee, who might have been a councillor, or by hearing about it from another family member who might have benefited from it previously. That is how they tended to find out about it. It appeared from their comments that it would be an improvement if there were an easier way of finding out about it.

Nanette Milne: So they were, by and large, receptive to the proposed change.

Dr McAlpine: Yes.

11:00

Nanette Milne: Are you aware of any amendments that may be required to the bill, either for tidying-up purposes or to give effect to any other issues? If so, can you let us know what they are?

Alan Eccles: We are not aware of any required amendments. We hope that not too many changes will be required to the bill as introduced.

Nanette Milne: Are you happy with that, Dr McAlpine?

Dr McAlpine: Yes.

The Convener: Members have no further questions. Do the witnesses have any additional comments?

Alan Eccles: No.

Dr McAlpine: No.

The Convener: That concludes our questions at this stage. Thank you for the information that you have provided, which we will consider carefully when writing our preliminary stage report. I invite you to take a seat in the public gallery while we hear from our next witness. I may ask you to rejoin us if further issues arise from the witness session.

I welcome Nancy Fancott from the Scottish Council for Voluntary Organisations, which helpfully has provided written evidence to the committee—we thank the SCVO for that. We may touch on some of the issues in that written evidence. I invite you to make a brief opening statement on the SCVO's role and your role in the organisation.

Nancy Fancott (Scottish Council for Voluntary Organisations): Good morning, and thank you for inviting the SCVO to appear before the committee. The SCVO is the umbrella body for the voluntary sector in Scotland. We are a membership organisation that currently comprises about 1,300 voluntary sector organisations, the vast majority of which are registered charities. Charity law and regulation is therefore dear to our hearts. We have worked hard with the sector on charity regulation in Scotland. We continue to monitor and consider its operation and how it supports the voluntary sector and charities to do what they want to do for the public in Scotland. That is our general interest in the subject matter.

I am one of several policy officers who are based in the Edinburgh office. My particular responsibilities include monitoring charity law issues as well as a number of other issues, which is why I am here.

The Convener: Thank you for putting that in context. I will kick off the questions, then my colleagues will continue. You may already have covered this point briefly in your opening statement, but can you tell the committee what your knowledge is of charitable trust reorganisation?

Nancy Fancott: The SCVO cannot provide detailed legal advice to the voluntary sector and registered charities. We have an information advice line and have provided over the years all sorts of supporting documents to assist organisations at the different stages of their development. We have a guide to charitable organisations and constitutions that provides basic information about the different options that voluntary sector organisations can consider when they are organising themselves or developing to the next stage. Within those documents, we set out the advantages and disadvantages of trusts,

companies that are incorporated under company law, unincorporated associations and so on.

Chapter 5 of the Charities and Trustee Investment (Scotland) Act 2005 governs the reorganisation of registered charities. In addition, OSCR has provided specific guidance on reorganisation, which I think it is reviewing. Those are where one would go for advice on charity reorganisation.

In this case, I have looked at the bill and the supporting documentation, and it seems quite reasonable to us that the fund would consider a trust format as its new form of organisation. It is not a membership organisation. As was previously explained, there is a pot of money in the form of investments and cash, so it is reasonable for the fund to look to being a trust. Because an act of Parliament created the fund, it falls outwith the reorganisation rules in the 2005 act, which is why we are here today, I guess.

The Convener: Thank you for your very full answer. In fact, you have answered my next question, so we will move on to Shirley-Anne Somerville.

Shirley-Anne Somerville: I have a bit of a long quote to read out, so bear with me. The promoter's memorandum states:

"the Trustees will be expressly required to adhere to the terms of the 2005 Act: resolve conflicts of interest in favour of the charity; and be afforded modern investment powers subject to express requirements to monitor investment performance, consider diversification and take appropriate professional advice. This latter requirement is one that is not found in the default law applicable to trustees, but it would appear appropriate to include it in a well managed modern charity, especially given the recent and current economic climate. Ultimately, the Trust reflects modern charity trust management practice taking account of the type of assets held (i.e. cash and investments) and the value of the assets."

We discussed with the first witness panel the idea of having modern investment powers that are subject to monitoring and further controls. Do you have experience that you can share with us about how that reflects not only good charity law but good charity practice? Why was it good to include that provision in the deeds of trust?

Nancy Fancott: Trust law places a duty of care on trustees, in the interests of the trust and the beneficiaries. Charity law places other requirements on charity trustees, some of whom will be trustees of trusts. From our point of view, charity law covers the most important issues, which are that trustees cannot issue resources from the trust directly to themselves and cannot remunerate themselves for their role as trustees. Those are among the most fundamental, underpinning principles of charity law.

The management of any investment is outside the scope of charity law. I assume that any trust that acts in the interests of its beneficiaries will want to protect the management of its resources. In the case of the fund, there is an investment issue, because it involves shares and cash. Apart from stating that commonsense principles of sound investment and a desire to manage the trust properly are required, I am not sure what else I can add.

Shirley-Anne Somerville: That is helpful. You will have heard the first witness panel's comments on the differences between the general purposes of the fund and the main objectives of the trust, and how the trustees want to develop those. Do you feel that an effective reorganisation process has been proposed?

Nancy Fancott: Yes, absolutely; it seems entirely sensible to us. We are reassured by the fact that we have in place a charity law framework and a regulator. The Ure Elder Trust has chosen to register as a charity the new trust entity that will be created. Right away, that will bring it within the range of the charity regulator, so it will have to comply with charity law, including charitable purposes, which are set out in the 2005 act. The trustees have decided to expand the trust a little to enable it to do slightly different things, albeit that they are consistent with the original aims and purpose of the fund as it was set up. As long as that comes within the confines of charity law and the aim of public benefit, we will support it. To some extent, it is up to the trustees to decide how they want to manage the organisation within charity law. That is all quite sensible.

Nanette Milne: I will ask the two questions that I put to the previous witnesses. First, how will reorganisation of the Ure Elder fund aid public scrutiny?

Nancy Fancott: It comes back to the fact that it is a registered charity. The fund is already a registered charity, but only since 2006, when our charity regulator got up and running. The simple answer to the question is that, as a registered charity, it must comply with all the requirements that that entails, including placing certain information on the charity register, which is available to members of the public online as well as through other more traditional means. The trust will retain the same charity registration number, and I do not think that its name will change too much, so the public will be able to recognise the entities and follow one to the other. The trust will have to provide accounting information annually, comply with charitable accounting regulations and provide an annual report that sets out the information that is required by OSCR. All of those documents will be made available to any member of the public who is interested in obtaining them.

There will be a robust system of public accountability through that means.

Nanette Milne: Finally, are any amendments to the bill required, either for tidying-up purposes or for any other reason?

Nancy Fancott: Not that I am aware of.

The Convener: Thank you. That is the end of our questions. Do you wish to put any further points to us at this stage?

Nancy Fancott: One always wants to take the opportunity to say something in such circumstances. We were keen to come today simply because we think that the bill is an interesting example of how our new system of charity law and regulation that we have set up over the past five years is proving its worth. It has provided us with a framework and reassurance, and it has certainly reduced the requirement for parliamentary scrutiny of the type of legislation that is represented by the Ure Elder Fund Transfer and Dissolution Bill.

I wonder whether, in the context of a future charity law review, there could be consideration of reducing even further the demands on Parliament in this type of situation. I do not know how many similar organisations with limited assets exist, but we might want to consider in the context of a charity law review a more streamlined process whereby we could deal with such cases and not use as many parliamentary resources, although there would have to be some kind of ministerial consideration, as we are talking about a future act of Parliament. However, it might be time for a charity law review in Scotland, and what we suggest could be one piece of that puzzle.

The Convener: I will discuss that useful point with my colleagues when we go into private session.

As there are no further questions from members, that concludes our evidence-taking session. I thank all the witnesses for their efforts in coming here today and providing us with their assistance.

We will now consider item 3 in private, in accordance with our earlier decision.

11:15

Meeting continued in private until 11:23.

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