

Updated report under section 33 of the Charities and Trustee Investment (Scotland) Act 2005 on SC009814 Dr Robert Malcolm Trust

One of the former charity trustees of the Dr Robert Malcolm Trust has been convicted of embezzling significant funds from the charity. He has been fined and will pay back over £500k to the charity. A judicial factor has been appointed by the Court and is now managing the affairs of the charity

Background

The Dr Robert Malcolm Trust was set up in 1987 and was deemed to be a charity by HMRC sometime before April 2006 when OSCR established the Scottish Charity Register under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act).

The purposes of the trust are:-

- to provide financial assistance by way of bursary, grant, loan, prize or otherwise (i) for the education of any promising student or students of United Kingdom birth who wishes or wish to study medicine, medicine science or related disciplines in the United Kingdom; and (ii) for the further medical education of any doctor or doctors of United Kingdom birth and who practices or practise medicine in the United Kingdom

OSCR opened an inquiry into this charity in 2012 following receipt of information alleging a failure in governance processes, leading to the charity's assets being put at considerable risk. Our inquiries into this complex case indicated there had been criminal conduct, so in line with our published policies we made a report to the Crown Office Procurator Fiscal Service (COPFS).

OSCR worked with the COPFS and Police Scotland to support the prosecution of Ian Brash, one of the former charity trustees, who pled guilty on 14 May 2018 to embezzling sums totalling £358,832 from the charity's wholly owned trading subsidiary Robert Malcolm Investments Limited.

Section 69 of the 2005 Act provides that an individual is disqualified from being a charity trustee if they have been convicted of an offence of dishonesty. Ian Brash is therefore disqualified from being a charity trustee of any charity.

OSCR considered that there was also misconduct in the administration of the charity by the remaining two charity trustees who failed in their duties as charity trustees. We therefore petitioned the Court of Session for the appointment of a Judicial Factor to the charity and to remove the remaining two trustees from the management and control of the charity.

On 17 June 2019 one of two remaining trustees resigned as trustee. On 26 June 2019 the Court of Session granted our motion to remove the other trustee from any role in the management and control of the charity and appointed Emma Porter of Aver Chartered Accountants as Judicial Factor. The order for removal has the effect of permanently disqualifying the individual concerned from acting as a charity trustee of any charity.

On 30 December 2020 sentence was passed on Ian Brash at Edinburgh Sheriff Court:

- He was fined £140,000
- The court made a confiscation order, requiring Mr Brash to pay £379,246.70, of which £198,590.60 is to be paid to the charity and £180,656.10 to the Scottish Government Cashback for Communities scheme
- Mr Brash has already repaid £320,753.30 to the charity, so the charity will receive a total of £519,343.90. This takes into account that the benefit obtained by Mr Brash from his criminal act was £700,000.

The Judicial Factor continues to manage the affairs of the charity.

OSCR

5 January 2021