

ERCS Board Meeting: Minutes of 15 August 2023, 2-5pm

In person at Andrew Carnegie House, Dunfermline, KY12 8AW

Present: Lloyd Austin Chair (LA), Tom Ballantine (TB), Julie Christie Treasurer (JC), Jackie Erdman (JE), Campbell Gemmell (CG), Juliet Harris (JH), Deborah Long Vicechair (DL from 3pm), Aedán Smith (AS), Clare Symonds (CS).

Apologies: Mary Church (MC).

In attendance: Shivali Fifield Chief Officer & minutes (SF), Ben Christman Inhouse Solicitor (BC), Benji Brown Policy & Advocacy Officer (BB).

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| 1 | <p>Welcome</p> <p>Apologies were noted from Mary and that Deborah would be joining at 3pm.</p> <p>Trustee check-in</p> <p>This Board Meeting followed a staff and board tour of Pittencrieff Park and lunch. All agreed that it had been a lovely morning and it was great to see everyone in person. Lloyd noted that this was the first full in-person Board meeting since the Constitution was adopted on 1 September 2020.</p> <p>Declarations of interest</p> <p>The conflict of interest policy was approved at the May Board meeting and states that:</p> <p><i>All trustees have the obligation to identify and disclose any conflict of interest at the start of the appropriate board meeting and any ongoing discussions.</i></p> <p>Campbell declared a new appointment: he has been engaged by the New South Wales State Environmental Defenders Office (EDO) to provide advice and potentially prepare an independent expert report on behalf of the Adnyamathanha Traditional Lands Association (ATLA), the registered Native Title Body Corporate in relation to the NeuRizer Underground Coal Gasification and Urea Project in South</p> | <p>23/23: SF to update the Register of Interests and ensure future agendas have a slot at the beginning to identify any conflict of interest.</p> |



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| | <p>Australia, reviewing the UCG proposal from a scientific and policy perspective. ATLA is concerned about the risks of underground coal gasification (UCG) and the project's impact on cultural heritage.</p> <p>Tom declared that his son works for Legal Services Agency – the law centre ERCS has a Memorandum of Understanding with to accept cases eligible for legal aid.</p> | |
| 2 | <p>Minutes of last meeting - Paper1</p> <p>The minutes of the last Board meeting on 16 May were approved as an accurate record.</p> <p>Matters arising - all action points have been completed except for:</p> <ul style="list-style-type: none">- 23/2 SF to update recruitment policy on ERCS becoming a <u>Level 1: Disability Confident Committed employer organisation.</u>- 23/3: SF to remove minutes from the website from September 2023 to keep within 2-year scope – as agreed at November meeting.- 23/12: SF to follow up with LA/CG after meeting with ESS and arrange introductory meeting with SEPA.- 23/14: SF to commission consultancy on ERCS's communication strategy end 2023/early 2024. <p>There were no other matters arising that were not covered in the agenda.</p> <p>Decision: The Board approved posting the May minutes on the ERCS website.</p> | <p>SF to complete outstanding actions:</p> <p>23/2, 23/3, 23/12, 23/14.</p> <p>23/24: SF to post approved minutes on website for 16 May 23.</p> |
| 3 | <p>Executive report – Papers 2a, 2b, 2c, 2d</p> <p>Lloyd informed the Board that Benji, Ben and Shivali would provide a verbal update at this Board meeting and that the next Executive Report would cover the period between May and November.</p> <p>The accompanying papers 2a-2d provide the details from the Advice, Advocacy and Operations Working Groups.</p> | |



The Board noted the report and accompanying papers and wanted to thank the ERCS team on their outputs since the last report.

In summary, the highlights from the officers' verbal updates since the last meeting were:

- Developing our role in rights awareness and outreach including publishing online *Voices for justice* blogs, FAQs, launch of our environmental justice network comprising clients from our Advice Service and preparations for ERCS Environmental Rights Summit on Wednesday 6 September.
- Developing our joint project with MECOPP Gypsy/Travellers service.
- Increasing our advice enquiries – now at over 200.
- Submitting representations to ESS (now at 8) and follow up liaison on the investigation process and outcomes.
- Scoping potential cases for judicial review.
- Progress in our advocacy on the right to a healthy environment including a report articulating the features for the substantive right to a healthy environment and producing a template response for the consultation on the Human Rights Bill.
- Formulating an action plan on challenging the assumptions of the review and consultation on environmental governance and correspondence with the Cabinet Secretary for Net Zero and Just Transition.
- Establishing relationships with the press media and regular coverage to advance our advocacy objectives.
- Steadily increasing our membership (now at 127) and subscribers (now at 800).
- Increasing our social media profile with corresponding increase in website activity and downloads.

Lloyd thanked Benji, Ben and Shivali for their updates. Clare commented on the interconnectedness between the Rights, Advocacy and Advice work. Lloyd agreed and said that we should ensure examples from the Advice Service are used in our advocacy work wherever we can and that [the snapshot of advice work](#) needs to be promoted as well as the [voices for justice blogs](#).

Juliet commented on the impact ERCS has made in advancing the right to a healthy environment both within the Civil Society Working



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| <p>Group on incorporation and Scottish Government. Aedán mentioned that Wildlife and Countryside LINK (WCL) have included the right to a healthy environment as one of their manifesto asks in the lead up to the general election and it would be good for ERCS to share learning with them.</p> | <p>23/25: LA to do an e-introduction between ERCS and WCL.</p> |
| <p>Advice Service development – Paper 3</p> <p>Shivali introduced Paper 3: Appraisal of ERCS establishing a law practice unit.</p> <p>Tom began by outlining his key questions for consideration including: need and volume of need to justify the costs of establishing an LLP, funding long term, additional costs for the additional structures, and whether it would be better to wait for the new provisions under the Regulation of Legal Services (Scotland) Bill (s.79-81: Eligibility criteria Removal of practising restrictions: law centres, citizens advice bodies and charities).</p> <p>Campbell responded to Tom’s questions including: the establishment of a law practice unit was always in ERCS’s mission/strategic objectives and that the Advice Service has evidenced the need, funding is always a risk and no greater for this venture, with new regulations the LLP structure can be adapted/dismantled, and that this is the perfect timing for ERCS and would be a missed opportunity if not taken. ‘We cannot see far from here and that’s okay. Our mission is to create the marker, test the market... and be creative’.</p> <p>Jackie echoed some of Tom’s questions and also wanted to know more about why the agreement with LSA to take legal aid cases could not continue.</p> <p>Juliet echoed Campbell’s ‘emotional and intellectual case’ for ERCS to establish an LLP including: ERCS has been at the forefront of environmental rights since being established and it’s important that it continues to be so – creating the tools for environmental justice and being best placed to support communities to use these tools. ‘It is the logical next step’.</p> <p>Shivali and Ben responded to each of the questions from evidence set out in Paper 3, the advice service and discussions with LSA that they are unable to continue supporting legal aid clients within their current resources. It was stressed that establishing an LLP can be seen as</p> | |



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| <p>another project that could be folded when no longer required and that the key risk is failure to appoint two solicitors with the appropriate skills and experience to form an LLP.</p> <p>Julie confirmed the ERCS budget and financial forecast had factored in costs for the development of the Advice Service.</p> <p>Decision: The Board approved the following:</p> <ol style="list-style-type: none">1. for ERCS to work towards establishing its own law practice unit as an LLP and to provide a workplan by January 2024 to set out the necessary actions.2. ERCS to recruit an Operations & Development Officer and appoint a Principal Solicitor to support the establishment of an LLP (note that both posts are necessary for ERCS operations irrespective of establishing an LLP).3. To monitor the progression of the Regulation of Legal Services (Scotland) Bill and factor in any potential changes to governance structures that may be helpful in the future. | <p>23/26: SF to recruit an Operations & Development Officer and appoint a Principal Solicitor as soon as possible.</p> |
| <p>Potential case for strategic litigation – Paper 4 & email 11/08/23</p> <p>Ben spoke to his email of 11 August 2023 where he set out a potential judicial review against the Scottish Ministers.</p> <p>This included an assessment against the strategic litigation factors set out in Paper 4 and an opinion of counsel. A well-regarded organisation has offered to underwrite ERCS’s costs and act as joint litigants.</p> <p>The Board discussed the case and potential risks.</p> <p>All agreed that a clear MOU was necessary between ERCS and the other organisation, including costs agreement, ERCS taking the lead in instructions and collaborative but clear comms processes for Scottish media. Tom will review the draft MOU.</p> <p>Decision: The Board agreed that, unless we receive an acceptable response to ERCS’s letter by 31 August and subject to an appropriate MoU/costs agreement, ERCS will instruct Edinburgh agents/counsel to lodge a petition for judicial review without delay.</p> | |



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| 4 | <p>Financial report – Papers 5, 5a, 5b</p> <p>Income and expenditure as at 30 June 2023</p> <p>Paper 5 notes ERCS’s management accounts as at 30 June which includes a cash summary report showing an operating surplus of £47,517 and an overall cash balance of £217,101.</p> <p>It also outlines the updated reserves policy and that ERCS has now set up an account with the Charity Bank and transferred £80,050 into an ethical 1-year fixed rate account (3.81% Gross/AER) which covers just over three months’ projected salary costs from January 2024 with the proposed new staff appointments.</p> <p>Going concern tests</p> <p>From here on, it is recommended that reserves are considered as a third going concern test at every Board meeting:</p> <ol style="list-style-type: none">1. There is confirmed income for ERCS to meet all its cash commitments for the next three months2. There is a robust and credible budget which shows that ERCS is able to break even or better for the next six months3. There are sufficient reserves to cover the forecast three months’ operating costs. <p>ERCS’s revised Internal Financial Controls and finance manual will be presented at the November Board Meeting following a review of all the financial processes.</p> <p>Given the time constraints Lloyd asked the Board to note the papers and to raise any questions with Julie or Shivali directly.</p> <p>In summary, the ERCS Board, on the recommendation of the Operations Working Group:</p> <ol style="list-style-type: none">1. Noted the income and expenditure as at 30 June 2023 with a cash balance of £217,101 including £80,050 reserves now transferred to The Charity Bank 1-year fixed term account.2. Noted the revised financial forecast 2023-2026 and fundraising targets.3. Approved the updated reserves policy. | <p>23/27: SF/JC to present a revised Internal Financial Controls and Finance Manual for the November Board Meeting.</p> |
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| | 4. Approved the addition of a third going concern test and decided that the three going concern tests were met. | |
| 5 | <p>Annual Report and Financial Statements – Papers 6, 6a</p> <p>Trustees were asked to provide any comments/amendments to the draft trustees’ report (Paper 6 by Friday 25 August).</p> <p>The Board noted the financial statements and independent examination report which have been reviewed by Julie, Shivali and Emma – only one note needs to be added.</p> <p>Shivali will finalise the annual report and financial statements with the accountant Geoghegans for final review by the Board in preparation for the AGM on 11 October. Deadline for approval is 11 September 23.</p> | <p>23/28: Trustees to provide final comments on the draft trustees’ report and financial statements by 25 August so that SF can finalise with the accountant.</p> <p>23/29: SF/JC to recommend report and statements for approval ready for AGM circulation by 11 September.</p> |
| 6 | <p>Governance</p> <p>ERCS Good Governance Checkup – Paper 7</p> <p>The Board completed the Good Governance Checkup survey in June/July and discussed the report produced by SCVO. All agreed that the comments provided by Shivali in response to some of the questions raised were very helpful.</p> <p>All agreed no further action at this stage was required but if any trustee had any questions to raise them with Lloyd or Shivali.</p> <p>Lloyd commented that the Board should give themselves ‘a pat on the back’ given the high scores received.</p> <p>Trustees’ skills audit – Paper 8</p> <p>The board completed the skills audit during June/July and noted that all areas were covered well except for the new addition of ‘lived experience of challenging local environmental justice as a resident’. Shivali said that this would be raised again in the ‘Call for</p> | <p>23/30: SF to thank SCVO for report.</p> <p>23/31 SF to ensure the Call for Nominations stresses that people with lived experience would be welcome to</p> |



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| | <p>Nominations’ but also that this area was being developed through the Environmental Justice Network</p> <p>Retiral and re-election of trustees – Paper 9</p> <p>Trustees due to retire at the next AGM all noted they would like to stand again.</p> <p>Shivali gave a brief overview of the preparations for the AGM to be held online 11 October 6-8pm.</p> | <p>stand for election as trustees.</p> <p>23/32: SF to send nomination papers to trustees standing for re/election.</p> <p>23/33: LA to confirm with LINK governance group that DL and AS will continue as their Board reps.</p> <p>23/34: SF to send out AGM notice and trustee recruitment pack w/c 11 September.</p> |
| 7 | <p>AOCB</p> <p>Future meetings 3rd Tuesday every three months 2-5pm: 21 November 2023, 20 February 2024, 21 May 2024, 20 August 2024, 19 November 2024.</p> <p>Shivali briefly summarised the programme outline for the Environmental Rights Summit on Wednesday 6 September.</p> | <p>23/35: SF to circulate dates for 2024 Board meetings.</p> |
| | <p>The meeting was closed at 5pm</p> | |

These minutes were approved as an accurate record on 21 November 2023.

Signed by Lloyd Austin, Chair.