

BAIRD TRUST REORGANISATION BILL COMMITTEE

Tuesday 3 May 2005

Session 2

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BAIRD TRUST REORGANISATION BILL COMMITTEE **2nd Meeting 2005, Session 2**

CONVENER

*Mr Andrew Arbuckle (Mid Scotland and Fife) (LD)

DEPUTY CONVENER

*Scott Barrie (Dunfermline West) (Lab)

COMMITTEE MEMBERS

*Mr David Davidson (North East Scotland) (Con)

*Trish Godman (West Renfrewshire) (Lab)

*Mr Kenny MacAskill (Lothians) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Marianne Baird (Baird Trust)

Alan Borthwick (Baird Trust)

David Campbell (Lindsays WS)

Ronald Oakes (Baird Trust)

CLERK TO THE COMMITTEE

Claire Menzies Smith

SUPPORT MANAGER

Jenny Gourley

LOCATION

Committee Room 3

Scottish Parliament
Baird Trust Reorganisation Bill
Committee

Tuesday 3 May 2005

[THE CONVENER *opened the meeting at 15:15*]

Item in Private

The Convener (Mr Andrew Arbuckle): Welcome to the second meeting of the Baird Trust Reorganisation Bill Committee. Today, we will concentrate on the principles of the bill. We will hear evidence from the promoter of the bill and from Mr David Campbell, who is an expert witness on reorganisation of public trusts. If required, we can thereafter ask the promoter to respond to any questions that arise from Mr Campbell's evidence.

As Scott Barrie has reminded us, all mobile phones and pagers should be switched off. No member should use any excuse to get away to do any electioneering until the meeting is finished. No apologies for absence have been received.

Under agenda item 1, I seek the committee's agreement to take item 3, which is consideration of the committee's approach to its preliminary stage report, in private. Is that agreed?

Members *indicated agreement.*

Baird Trust Reorganisation Bill
(General Principles)

15:16

The Convener: We move on to agenda item 2. I welcome the representatives of the bill's promoter. With us are Marianne Baird, who is chair and trustee of the Baird Trust; Alan Borthwick, who is a trustee of the Baird Trust and a partner at Brechin Tindal Oatts; and Ronald Oakes, who is secretary and treasurer of the Baird Trust.

We have a number of questions for you. First, will you explain why a private bill is necessary to reorganise the trust?

Marianne Baird (Baird Trust): We are promoting the bill simply because we seek to simplify the Baird Trust's structure and to amend its objects so that we can widen its scope without departing from the spirit and intent of the original donor. The problem is that we cannot do that without an act of Parliament. We could find no good reason why the current trust should remain a body corporate that is incorporated by an act of Parliament. If we change it into a charitable company limited by guarantee, we will be able to take account of changing circumstances without the need for a private bill every time the trust must change, which the trustees consider to be a waste of charitable funds and parliamentary time.

The Convener: Would you care to highlight any particular aspects that are out of date and need to be changed?

Marianne Baird: One of the main aspects is described in paragraph 17 of the promoter's memorandum. In the Baird Trust Order Confirmation Acts of 1939, 1957 and 1971 there are lengthy provisions on the Baird lecture, the format and delivery of which is very prescribed. We seek to change that and to produce a Baird presentation. The Baird lecture takes place every five years and comprises a series of six public lectures that are given by a minister of the Church of Scotland and thereafter published. Nowadays, public lectures are less frequently used, given the huge range of media that are now available for dissemination of information.

The idea of the lectures was to spread the word on the work of the Church of Scotland in preaching the gospel in Scotland and beyond, and on any other issues of interest connected with theology and religion. Now that we have the options of the internet, television and radio, as well as the lecture format, we would like to be able to make the lectures accessible in formats that were not available when the trust was set up.

The Convener: You mentioned the Baird lecture. The paragraph in the promoter's memorandum that deals with the lecture contains the only reference to the financial basis of the trust. Can you give the committee an idea of the current value of the trust's assets and its average annual income and expenditure?

Ronald Oakes (Baird Trust): The trust's assets are clearly displayed on our balance sheet. Current assets total £7.2 million. The trust's income from investments is £260,000. There is also interest of £25,000 and other assorted income of £6,000. Total income in 2004 was £292,000.

The Convener: Is the trust currently spending its annual income?

Ronald Oakes: In 2004, we spent £265,000. Spending can go up and down, depending on the number of applications for grants that we receive.

The Convener: You have indicated that you examined other possible legal structures for the trust, but they were not considered appropriate. Why do you think that it is essential for the trust to become a company limited by guarantee?

Alan Borthwick (Baird Trust): We considered other structures, but there are not many options. One possibility was for the charity to revert to being a trust and to the structure that James Baird set up in 1873. However, we felt that that was an outdated way of dealing with a body that has assets of such magnitude. We considered remaining incorporated by acts of Parliament, but we decided that that is not appropriate, for the reasons that we have given. That left only one option, which was for the trust to become a charitable company limited by guarantee.

Mr Kenny MacAskill (Lothians) (SNP): How will the trustees ensure that the new company remains dormant and non-trading, pending transfer from the current trust?

Alan Borthwick: The new company is currently under the control of the existing trustees, who have instructed the secretary and treasurer, Mr Oakes, to ensure that no transactions are carried out by the company until the undertaking of the current trust is transferred.

Mr MacAskill: What are the differences between the general objects and purposes of the current trust and the main objects in the memorandum of association for the new company, especially in relation to the Baird lecture or presentation?

Marianne Baird: The object of the current trust is primarily to further the work of the Church of Scotland in spreading and preaching the gospel in Scotland. The objects of the new company are expanded beyond the Church of Scotland to

"the furtherance of the Christian religion in connection with the Church of Scotland or of other churches in Scotland or beyond, and the support of such institutions".

There is another difference: in the original trust, no one who is not a member of the Church of Scotland can be a trustee, but no such restriction will be placed on trustees of the new company, which means that the pool of potential trustees is expanded. There is no provision in the Baird Trust Order Confirmation Act 1939 or the acts that amend it for people other than the trustees to be members of the charity, but the new company has provisions for open membership. Article 5 of the new company's articles of association states:

"Any person who wishes to become a member ... shall lodge with the Company a written application for membership signed by him accompanied by a written declaration that he endorses and will uphold the objects of the Company Membership may only be refused for good and proper reasons."

Mr MacAskill: Thank you. We cannot oppose anything secular or ecumenical such as that.

Paragraph 22 of the promoter's memorandum states that the new company's memorandum of association permits wider powers of investment than those specified in the 1939 act. In what way are the new powers wider and what controls are placed on them? You probably touched on that in your previous answer.

Alan Borthwick: The current trust's investment powers are restricted by the Trustee Investment Act 1961 and subsequent similar legislation. The memorandum of association of the new company widens those powers somewhat and allows the trustees to have greater discretion in the range of investments that they can choose. That is in line with part 3 of the Charities and Trustee Investment (Scotland) Bill, which Parliament is currently considering, so our new constitution is entirely consistent with what is intended—it is only an intention, of course—in the Charities and Trustee Investment (Scotland) Bill. The broad summary is that the new memorandum of association is less restrictive.

Mr MacAskill: How will reorganisation of the Baird Trust aid public scrutiny of the trust?

Alan Borthwick: Public scrutiny will increase. In addition to the current arrangements for scrutiny by the Inland Revenue and the Office of the Scottish Charity Regulator, the annual accounts will have to be lodged with the registrar of companies at Companies House, changes of trustees and secretary will have to be intimated to Companies House—which, as you know, is a public register—and the public will have the right to inspect the company's statutory books at its registered office.

Trish Godman (West Renfrewshire) (Lab): Paragraph 30 of the promoter's memorandum states that the Inland Revenue sought some minor amendments to the constitution of the new company. Will you tell me what they were and whether the Inland Revenue is content to recognise the new company as a registered Scottish charity?

Alan Borthwick: The Inland Revenue is happy to recognise the new company as a Scottish charity. It sought two changes, the first of which related to the opening up of membership of the Baird Trust. The Inland Revenue asked that our basis for turning down applications for membership be less restrictive and said that we must have reasonable cause to refuse membership. On reflection, we were happy to agree to that.

The other change that the Inland Revenue requested was to a provision in the new constitution that had been carried over from the old one, under which the trustees were entitled to receive an attendance allowance over and above routine expenses for attending trustee meetings. The Inland Revenue suggested that we delete that provision from the new constitution; the trustees were happy to agree to that.

Trish Godman: What was the nature of the clarifications that the Church of Scotland and the Office of the Scottish Charity Regulator requested?

Alan Borthwick: The Church of Scotland wanted clarification on the expansion of the range of beneficiaries from the Church of Scotland into the Christian religion more widely. We gave the church our views on that, and it was entirely happy with the expansion.

The other matter on which the Church of Scotland wanted clarification was whether our new constitution would allow the trust to donate to the housing and loan fund, which is a special Church of Scotland fund that the Baird Trust has supported over a number of years. We had a dialogue with the church and it is perfectly happy with the outcome.

Trish Godman: Paragraph 28 of your memorandum lists about seven current trusts. If you increase that number—which seems to be your intention—will that have any effect on the existing trusts? I suppose that those trusts get regular grants from you and that, if you increase the number of trusts, it might have an effect on how much money trusts might get. What kind of discussions, if any, have you had with those groups about what will happen after the reorganisation?

15:30

Alan Borthwick: The seven trusts that are listed are just a sample—there are many more beneficiaries, but those are the seven that we consulted. We wrote to them and explained exactly what the changes would mean, as we are required to do under the parliamentary private bill procedures. There were no adverse comments from those who responded.

Scott Barrie (Dunfermline West) (Lab): I would like to clarify a point that arose in relation to OSCR. As you know, Parliament is currently handling stage 2 of the Charities and Trustee Investment (Scotland) Bill. Have you thought about how any changes that you are proposing might be affected by that bill?

Alan Borthwick: We are aware of the proposed legislation. We have studied the McFadden report and have been following the progress of the bill with interest. As matters stand, there is no change that we want to make at this stage in respect of what is intended in the Charities and Trustee Investment (Scotland) Bill.

Scott Barrie: It is important that you do not propose a change only to discover that other legislation has an impact on the situation.

Alan Borthwick: Absolutely.

Mr David Davidson (North East Scotland) (Con): Will the change result in any savings in administration costs to the trust?

Ronald Oakes: I do not think so. However, by the same token, I do not expect there to be any additional costs.

Mr Davidson: Are you aware of any amendments that might have to be lodged that might deliver more clearly what you are trying to achieve?

Alan Borthwick: We are not aware of any such amendments.

Mr Davidson: Are you content that all the proposals that you have made will supply the Baird Trust with everything that it needs for the future?

Alan Borthwick: Yes.

The Convener: I thank the witnesses for their attendance. Their answers were helpful, lucid and valuable to us. We will now hear an expert legal opinion, but I ask our witnesses to remain because we might call them back if any issues arise from the legal advice.

I welcome to the meeting David Campbell from Lindsays WS Ltd. We have asked you to give us an expert legal opinion on the proposed change. It might be helpful if you could tell the committee something about your experience of trust reorganisation.

David Campbell (Lindsays WS): I am glad that you have given me this opportunity, especially as you have introduced me as an expert. I am a reporter to the inner house of the Court of Session, which deals with variation of trusts and, in particular, of trust powers. My experience is limited to six or seven reports during the past two or three years. I have never been involved in variation of a trust that has been created by statute; this is a first for me. I could find very little in text books to give me any guidance. I have no experience of this kind of variation but I hope that I can give the committee some kind of input about variation of trusts generally.

The Convener: In that case, can you tell a layman what are the Inland Revenue's criteria for recognising a body as a charitable organisation?

David Campbell: I am sorry to say that that is outwith my sphere as an expert.

The Convener: The committee will remain uninformed about that. Are there any other questions?

Scott Barrie: Perhaps Mr Campbell can help us out by telling us what he thinks is the most appropriate legal structure for the Baird Trust?

David Campbell: Nowadays the trend is for charities—especially larger ones—to have a corporate structure that is limited by guarantee. My firm has charity advisers who always recommend to their clients that they go down that road. I have not been involved in charity law as such, so I regret to say that I do not have the experience to tell you about the pros and cons, but that route is a more flexible and workable arrangement for charities than using 100-year-old conditions that, through no fault of the early 20th century draftsmen, are outdated.

Scott Barrie: In your opinion—

David Campbell: That is the norm.

Scott Barrie: What is proposed would be an appropriate structure. That is quite helpful; it helps me out anyway.

Paragraph 20 of the promoter's memorandum states that

"the Articles of Association of Newco are drafted to reflect"

good administrative practice for a modern charity. Do you agree with that, and if so, why?

David Campbell: I have been concentrating more on the memorandum and the variation of powers, which reflects my experience in dealing with trusts. Articles of association are working regulations for a corporate body; again, if the committee seeks expert input on that, you are looking for someone with a strong corporate background. I regret to say that my background is

general and limited to variation of trusts going before the Court of Session. I am afraid that I cannot answer that question.

Mr Davidson: At this stage, would you recommend that any particular areas of the bill require amendment to fulfil the purposes that the promoter seeks?

David Campbell: I compared the powers clause in the memorandum of association to the objectives of the trust as currently drafted in the three acts of Parliament. I do not think that section 20 of the 1939 act has been varied by the Baird Trust Order Confirmation Act 1957 or the Baird Trust Order Confirmation Act 1971. I compared that section to paragraph 3.1 on pages 1 and 2 of the memorandum of association. In 1939, the wording limited the trust to furthering the work of the Church of Scotland; I think that it says "the established church". You heard earlier that that is being broadened to include the Church of Scotland and other churches in Scotland. I thought that that was not necessarily a major change but a change that is worthy of note. If the trust had come before me as a reporter to the court, I would have highlighted that point. I am not saying whether it is good or bad: it is a matter for the court to say whether such a change represents an appropriate widening of purposes.

The second change is an increase in powers to include areas furth of Scotland. The powers in the 1939 act were limited to

"preaching of the Gospel in Scotland ... among the population of Scotland".

There was no foreign element—I include England in that. The act mentioned home mission work, which the Church of Scotland still does. There are one or two wee changes, including removal of the phrase:

"including the Highlands and Islands."

In 1939 there seemed to be an emphasis on populated areas. The Highlands and Islands were mentioned specifically, but that phrase has now been dropped from the draft memorandum and articles. The word "church"—with a small or capital C—is not defined in the current draft memo.

The other matter that sprang to my mind, because I know that it comes quite often before the Court of Session, is the obtaining of professional indemnity insurance by the trustees. Talk of the Charities and Trustee Investment (Scotland) Bill, which is passing through Holyrood, has reminded me that I should have checked the position on indemnity insurance for charitable trustees. I know that the court has strict rules. In one case, the trustees of Dollar Academy sought an extension of their powers, which the court said would be fine in certain limited circumstances; the inner house of the Court of Session has followed

that decision since. I have a brief summary of the conditions, which I could read out, but that is perhaps too technical.

The Convener: Does anyone have any questions about that?

Mr Davidson: I want to press Mr Campbell a little. You brought up the Charities and Trustee Investment (Scotland) Bill, which is going through the Scottish Parliament. Are you suggesting—or even hinting—that the final stages of the Baird Trust Reorganisation Bill should not be completed until the Charities and Trustee Investment (Scotland) Bill has been dealt with, in case it changes things? Alternatively, do you think that the Baird Trust Reorganisation Bill, as drafted, will provide the required freedom to deal with any eventual changes?

David Campbell: Modern trustees, who are not necessarily remunerated, as opposed to company directors, who are often extremely well remunerated, will generally seek some kind of indemnity cover for their negligence. The Court of Session has resisted that on the basis that it is an extension of powers beyond what most trusts need. I do not know whether the Charities and Trustee Investment (Scotland) Bill will give charities powers to seek indemnity insurance. I meant to check that. Of course, that bill is changing all the time.

The Convener: We are not finished with it yet.

Mr Davidson: That was the purpose of the question. Mr Campbell is talking about something that will be set in tablets of stone, according to the promoter.

David Campbell: That is not necessarily the case; the memorandum and articles can be changed by special resolution of the company. I do not think that they have to come back here for approval.

Mr Davidson: They will not, if the bill is passed. However, we have an obligation to ensure that the bill is all-encompassing and will take account of variations that might come along.

My original question was not so much about what changes the bill seeks to make to previous acts, but about whether there are any parts of it—apart from those relating to indemnity—that you feel may be amended during the parliamentary process. Which parts of the bill could be amended and what would be the advantage of doing so?

15:45

David Campbell: I do not think that there was anything beyond the four points that I mentioned, which were the major ones that I found. Any other changes that I had in mind were minor and I do not consider them to be particularly worthy of note.

Mr Davidson: Finally, is there anything that you would like to be included in the bill that has not been included?

David Campbell: No. As far as I can see, the bill is a mechanism for the dissolution of the existing Baird Trust and the creation of a modern, 21st century charitable trust. I suggest no changes to the bill as drafted.

The Convener: Are there any more questions?

Scott Barrie: How will reorganisation of the Baird Trust aid public scrutiny of the trust's activities?

David Campbell: That question has already been answered; I have nothing to add. The new body will be a limited company that will have certain return obligations to Companies House.

The Convener: As there are no more questions, I thank David Campbell very much for the information that he has provided, especially his view that the conversion would bring the trust into the 21st century.

In the light of the information that we have received, I invite the representatives of the promoter to return to the table, as we have one more question that relates to an issue that Scott Barrie and David Davidson raised. Does the proposed model for the trust require to be in line with the Charities and Trustee Investment (Scotland) Bill? In other words, if that bill is amended, will the trust require to be changed to remain in line with it?

Alan Borthwick: I would say that it would not. The Baird Trust Reorganisation Bill is a simple bill that seeks to transfer assets and liabilities to the new company. Any legislation that the Scottish Parliament enacts subsequent to passing the bill will surely apply to the new company. I do not think that there are any changes of which we will need to take account.

Mr Davidson: Do the trustees have anything to say on indemnity, which Mr Campbell mentioned?

Alan Borthwick: As far as I am concerned, the constitution of a company limited by guarantee would contain a fairly standard clause on that. I have seen such clauses many times. The trust does not have professional indemnity insurance, nor has there been any discussion about taking it out. Perhaps that is something to consider in the future, but there is no intention to effect such cover.

Mr Davidson: Thank you for clarifying that.

The Convener: For clarity, are you sure that if the reorganisation of the Baird Trust goes ahead, it will be in line with the Charities and Trustee Investment (Scotland) Bill, as enacted?

Alan Borthwick: Yes.

15:49

Marianne Baird: That is certainly our intention.

Meeting continued in private until 16:00.

Alan Borthwick: The reorganisation will be in line with the Charities and Trustee Investment (Scotland) Bill as it stands at present, but it could obviously change.

The Convener: Thank you for that.

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