

**THE CHARITY COMMISSION FOR ENGLAND AND WALES**

**THE ROYAL NATIONAL INSTITUTE OF BLIND PEOPLE (226227)**

**FINAL DECISION MADE ON 16 FEBRUARY 2010**

**DECISION TO AUTHORISE PAYMENT OF CHAIR OF CHARITY TRUSTEES**

**Issue before the Commission**

- 1 Whether to authorise the payment of the Chair of the charity trustees under the terms of the charity's governing document.

**Decision**

- 2 The Commission is satisfied that the charity has demonstrated that the proposed payment of the Chair would be expedient in the interests of the charity. In other words, there would be clear and significant advantages to the charity in making the payments.
- 3 In the circumstances as reported to us, the Commission authorises the charity to pay its current Chair a salary of £24,000 per annum for acting as Chair, until the end of his current term of office, which is due to end no later than 22 July 2012, or until any earlier date of his term ending, subject to annual review by the unconflicted charity trustees.
- 4 The Commission advises the charity to consult the Commission on how the possibility of payment should be addressed in election materials before any application is made for consent to make payments beyond the current Chair's term, on any appointment of a new Chair.
- 5 This decision was made on behalf of the Commission by Board Members Sharmila Nebhrajani and John Wood, acting under delegated authority.

**Background**

- 6 In May 2009, the charity asked the Commission for authority to pay its Chair elect a salary of £24,000 per annum for acting as Chair from the date he was due to take up office, 23 July 2009. The proposed salary was for an anticipated two days' work per week.
- 7 The Commission's prior written consent to such payments is required under article 4(B) of the charity's Royal Charter. This qualified power to pay charity trustees for acting as trustees was introduced in 2006, and the Commission provided authority for the payment of reasonable remuneration to four charity trustees (including the then Chair and Honorary Treasurer) in 2006, and to a fifth in 2007.
- 8 The charity's Chair and other Honorary Officers are elected by the charity's Assembly under bye-law 38 of the charity's bye-laws, which form part of its governing documents. Bye-law 15 provides that the Assembly shall consist of between 50 and 100 of the charity's members, and a majority must be people who are blind. Elections take place at the Assembly's annual meeting.

- 9 The request for authority was made by the charity's Head of Corporate Services, and the Commission asked that the charity's Board should consider the proposed payment, taking account of the factors set out in section F4 of the Commission's published guidance CC11, *Trustee payments and expenses*.
- 10 On 16 July 2009, the charity's Board considered the proposal to pay the Chair elect, a week before he was due to take up office. Some of the unconflicted charity trustees raised concerns that there had been no suggestion of payment before the election of the Chair, so this had not been considered by the charity's members, and may have had an impact on the field of potential candidates. But the unconflicted charity trustees resolved by a majority of 14 to 3 that the new chair should be paid £24,000 per annum for being Chair, approximately equivalent to £240 per day for the anticipated two days' work a week, subject to an annual review by the charity's Board.
- 11 In August 2009, the Commission's Executive Director of Charity Services decided to provide authority for one year (rather than for the full three years of the Chair's term that the charity had requested), and said that further authority would not be given unless the new Chair resigned and was re-elected. The Executive Director of Charity Services was satisfied that the payment could be shown to be reasonable and affordable, and would not affect the charity's ability to carry out its objects, but shared the concern of some of the unconflicted charity trustees that potential candidates might not have stood for election because they were not aware that authority for payment might be sought later.
- 12 In October, the charity requested a review of the decision, arguing that it would not be in the charity's interest for the new chair to resign and be re-elected in order to secure payment beyond his first year of office.

## **Evidence before the Commission**

### ***Constitutional position***

- 13 The charity's accounts for the year ended 31 March 2009 explained that there would be changes to the charity's governance structure, including the dissolution of the Assembly, to be replaced by a new RNIB UK Members Forum (supported by regional and national members' fora) and Third Sector Forum.
- 14 During the oral component of the decision review, held on 18 January 2010, the charity's Chief Executive and legal adviser informed the Commission that:
  - The charity was in a state of constitutional transition.
  - The charity's Assembly had been dissolved, and new regional membership fora were in the process of being established.
  - The UK Members Forum would take on the role of electing the charity's Honorary Officers, including the Chair.
  - But it would take several months to induct and train the members of the membership fora.
  - The charity intended to petition the Privy Council in due course for an amendment to its Charter and Byelaws to give effect to these changes.

- So there was currently no operative mechanism for electing a new Chair.
- 15 Information provided by the charity after the oral component showed that the charity's Board had decided at the end of 2008 to "dissolve" the Assembly, subject to consultation with the Assembly. This consultation took place at the Assembly's March 2009 meeting. The "final" meeting of the Assembly was held on 23 July 2009 and the Assembly effectively disbanded, notwithstanding that until the constitution of the charity has been amended pursuant to the approval of the Privy Council there is no constitutional authority for the steps that the charity has taken in this respect.
  - 16 It is unlikely that the Commission would have taken the decision on the terms it did had it been aware of the de facto dissolution of the Assembly, and the proposed timetable for establishing new electoral arrangements.

### ***Possibility of payment***

- 17 The Commission was told during the oral component that the charity trustees supported the voluntary principle, but supported payments for loss of earnings to enable a broader range of people to serve as charity trustees.
- 18 Other charity trustees had been paid in the past, with the Commission's authority (as noted above). The Commission was told during the oral component that the charity's membership understood that some charity trustees were paid for loss of earnings, and so that payments were available if needed.
- 19 The Commission was told that the other candidate for Chair had indicated he would not need payment, so the successful candidate's silence on this issue may have been understood to imply that he would require payment.
- 20 But there was no statement of the charity's position in relation to trustee payments in the election materials.

### **Conclusions**

- 21 The charity demonstrated the expediency of paying its Chair against the criteria set out in the Commission's published guidance (CC11), in particular because it would benefit the charity to have a Chair who is blind.
- 22 The Commission remained of the view that there should have been greater clarity before the election about the possibility that consent for remuneration might be sought.
- 23 The Commission appreciates the charity's constitution is in transition, and a new election before 2012 would be difficult to stage for practical reasons. And the Commission recognises the additional cost and staff time involved for the charity in conducting any election, given that the vast majority of its electorate consists of people who are blind or partially-sighted.
- 24 The Commission recognises that the current Chair has a key role in leading the charity through its constitutional transition, and that continuity of leadership will be important for the charity during this time.
- 25 So the Commission will extend the written authority to continue until 22 July 2012, the projected end of the current Chair's three-year term of office, or until

any earlier date of his term ending, and subject to the annual review proposed by the unconflicted charity trustees at their meeting on 16 July 2009.

- 26 But the Commission recommends that the possibility of payment should be addressed in future election materials. And the Commission will consider developing its general guidance in this area.
- 27 The Commission remains concerned that the factors about the constitutional position of the charity emerging as set out in paragraph 14 above were not made known to the Commission until the oral component of the decision review on 18 January and that the charity has anticipated constitutional changes before they have been submitted to and approved by the Privy Council.