



Case Report

Age UK (1128267)

About the charity

Age UK was created in 2009 by the merger of Age Concern England and Help the Aged. It is a charitable company limited by guarantee and its purposes are to promote any charitable purposes for the benefit of older people. There is also a network of local Age UKs, which are separately registered with the Charity Commission ('the commission'), as well as legally separate organisations in Wales, Scotland and Northern Ireland. There are further charities related to Age UK and linked in the register of charities, including Age International, which supports older people overseas.

Age UK has subsidiary trading companies that trade with members of the public including the wholly owned subsidiaries: Age UK Enterprises Limited ('Enterprises Ltd') and Age UK Trading - a community interest company (CIC). These entities together with the charity are known as the Age UK Group.

The subsidiary trading companies offer commercial products and services developed in conjunction with commercial partners to raise funds for the charity, with surpluses made by the subsidiary trading companies gift-aided to the charity.

Why the Charity Commission got involved

Media reports in February 2016 suggested that the charity received £6 million a year from energy supplier E.ON to promote the Age UK fixed 2 year energy tariff ('the tariff') to older people and that the tariff was more expensive than other tariffs available. Following the reports and a number of complaints received, the commission opened a compliance case. At the same time and also as a result of the allegations in newspaper reports, Ofgem (the Office of Gas and Electricity Markets) decided to look into the matter, considering whether to open a formal inquiry.

The energy contract was made between E.ON and the subsidiary trading company Enterprises Ltd. The investigation into the consumer and market aspects of the E.ON deal was the responsibility of Ofgem. As charity regulator, the commission wanted to establish whether the charity trustees had properly discharged their legal duties to the charity. Both regulators agreed to co-operate and focus on their respective regulatory remits.

In response to the media reports, the charity submitted a serious incident report to the commission. E.ON and the charity decided to temporarily suspend offering the tariff to new and renewing customers.

The action we took

The commission opened a compliance case and immediately contacted the charity to gather information about the charity's governance arrangements, the trustees' oversight of the subsidiary trading companies and the particular arrangements and agreements with E.ON. We also met with the trustees.

What we found

Firstly it should be noted that the commission recognises that the diversification of fundraising methods is an evolving area in the charity sector and one at which Age UK has, in some respects, been at the forefront. We recognise the benefits a stable and secure income stream can bring to a charity. We also recognise the benefits commercial relationships and partnerships can bring to charities and beneficiaries.

Given the inherent risks in such arrangements, however, to a charity's brand and reputation, we are also clear that decision making and controls around such arrangements are critical.

Age UK's commercial enterprises are wholly-owned subsidiaries established to carry out trading activities to generate income which can be paid to the charity. The commercial enterprises are allowed by the charity to use the Age UK name and brand in connection with their trading activities. Many of the products, including energy, home and motor insurance, funeral plans and holidays, are designed specifically to be relevant to older people and their target customers include beneficiaries of the charity. Enterprises Ltd has had a commercial partnership with E.ON since September 1999 - a new 10 year agreement was entered into in January 2011.

Did the trustees comply with their legal duty to avoid exposing the charity's assets (including its reputation) to undue risk?

The risk of marketing commercial products where commercial customers are also the charity's beneficiaries

The charity itself has acknowledged, "Age UK is unusual in the charity sector because its target customers are also its beneficiaries. This puts [the charity] under particular pressure to provide best value to our customers and means we are liable to be judged by the standards we are preaching to others".

Age UK campaigns on fuel poverty and energy efficiency, with its website stating "each winter one older person dies every seven minutes because of the cold". The page then has a link to 'save money on your energy bills' (<http://www.ageuk.org.uk/money-matters/money-management/energy-efficiency/save-money-on-your-energy-bills>).

The commission therefore sought to clarify whether:

- the charity was seeking to further its charitable purposes by contracting through its trading subsidiary with E.ON in order to try to get its beneficiaries the most suitable deal on energy, or
- whether they were solely seeking to raise funds for the charity - this was particularly the case as Age UK worked with E.ON to develop products which otherwise may not have been available

The charity informed us that it was seeking to raise funds and, although not furthering charitable purposes, had regard to the particular needs of older people.

The charity made clear that it seeks to further its charitable purposes through the provision of impartial free advice to its beneficiaries on matters relating to heating and fuel poverty and poverty more generally through its helpline and the guidance available on its website and in hard copy form. This includes advice on switching energy supplier and obtaining help with heating costs.

The trustees told the commission that they do not attempt to sell their commercial products and services to beneficiaries who approach them for advice or use their services and do not refer beneficiaries who seek information and advice to E.ON.

The commission understands that between August 2013 and 9 July 2014, Age UK Enterprises Ltd together with its network of Trading Alliance Members were involved in making sales of the tariff and that after 9 July 2014, Trading Alliance Members continued to generate leads for a handover to sales.

The commission considers that the charity's beneficiaries are not only those who rely on Age UK for direct support. Older people who are in charitable need, whether or not directly supported by the charity, are all beneficiaries that the charity is established to support.

It was clear to the commission during its review that Age UK had processes in place for reviewing the suitability of products prior to selection. The commission also saw evidence that these processes had been followed in the case of the E.ON tariff. However it was not clear that Age UK having complied with its processes, sufficiently considered the risks of targeting beneficiaries with a commercial product in an area where the charity also campaigns on behalf of its beneficiaries. It is therefore the commission's view that, given the potential for significant conflict between the impact of commercial arrangements on the charity's purposes with its beneficiaries and income generation by the trading company, the approval, contract drafting, monitoring processes and conflict management governance in this area be reviewed.

Recommendation: That Age UK conduct a governance process review including, but not limited to:

- the policies, procedures and agreements guiding and controlling trading subsidiaries and their use of the charity's brand - these should set out clearly how any conflict arising between raising money on the one hand and furthering charitable purposes on the other will be managed to ensure there is no detrimental impact upon the charity's brand, reputation and how it furthers its charitable work
- ensuring the robust rolling review of all products from the perspective of the impact furthering the charity's purposes
- ensuring the beneficiary class of Age UK as defined in the charity's governing document is clearly set out in all policies and procedures

The reputational risk of participation in the energy market

Participation in the energy market poses significant risks to a charity, because of the volatility and competition in the market and the tariff structure, which may be confusing to customers. What might be the best price when a tariff is first launched may quickly become less competitive if energy prices change during the life of the offer. Also the value added benefits of a particular offer to older people, the charity's beneficiaries, (such as no exit fees) may not necessarily be understood by customers in price comparisons.

In 2014, an Ofgem investigation found that E.ON for a period from June 2010 to December 2013 (except for some practices which had ceased earlier in this period such as door to door selling) had broken energy sales rules including poor sales practices in its selling of contracts to its customers. E.ON identified 465,000 customers who may have been affected and we understand that around 10% of these were sold the Age UK tariff. This highlighted the need to take into account the risk that entering into the commercial arrangements might not further the charity's purposes for some of the charity's beneficiaries.

The decision to participate in the energy market through a commercial partnership is one for the trustees, taking such professional advice as may be necessary. The withdrawal of the tariff on 10 February 2016 provides the trustees of Age UK with an opportunity to consider this further.

Recommendation: That Age UK undertakes a review to determine whether continued engagement in the energy market remains in the best interests of the charity clearly identifying and assessing the risks and benefits.

Did the trustees have appropriate processes for oversight and control of the commercial partnership with E.ON ensuring it remained in the best interests of the charity throughout its duration?

The commission has established that trustees of Age UK exercise oversight and scrutiny of Enterprises Ltd in the following ways:

- two of the trustees (including the chair) sit on the board of Enterprises Ltd
- the trustees receive reports, including the minutes of meetings of the board of Enterprises Ltd; the CEO's report at every trustee meeting includes updates on all parts of the Age UK Group, including Enterprises Ltd
- the managing director of Enterprises Ltd joins trustee meetings for discussions relating to Enterprises Ltd
- the annual business plan and budget of Enterprises Ltd is approved by the trustees
- following a change to the articles of association of Enterprises Ltd in 2012, the charity has increased its control of Enterprises Ltd - it now has reserve powers allowing it to direct Enterprises Ltd's directors to take or refrain from taking a particular step - it also appoints all of the directors of Enterprises Ltd and participates in the appointment of the company's managing director
- the charity's CEO is also CEO of the Age UK Group and is responsible for the management team comprising the charity's executive management and the managing directors of Enterprises Ltd and the CIC
- the audit and risk committee of Age UK, a sub-committee of the trustees, receives minutes from the audit and risk committee of Enterprises Ltd, alongside other reports from Enterprises Ltd; the chairman of Enterprises Ltd's audit and risk committee attends the meetings of the Age UK audit and risk committee
- the charity has imposed contractual controls on Enterprises Ltd through legal agreements, including a trade mark licence imposing limits on the way in which the brand may be sub-licensed

Age UK also informed the commission that it required all products or services offered by the charity's subsidiary trading companies to:

- enable older people to live independently
- have a unique customer and aftercare service which is sympathetic and specific to an older person's market
- have undergone a rigorous product development process
- when fully launched, seeks to be the best fit-for-purpose product for the market

In selecting products or services the commission was informed that the initial considerations of Age UK trustees are:

- is it good for customers?
- is it good for the Age UK brand?
- is it good for commercial growth?

The charity has stated that it does not aim to be the cheapest provider - a report to the trustees in November 2011 on commercial positioning suggested that 'Age UK is currently led by value rather than price'. The contract with E.ON therefore never guaranteed the lowest tariff and the literature is consistent with this.

The trustees in line with the positioning outlined above considered the tariff offered through E.ON to be a competitively priced product tailored for the market for older people, at least in part owing to the product often being a longer term fixed product than cheaper tariffs with no exit penalty.

However, the trustees of the charity do not dispute that it was rarely the cheapest tariff offered by E.ON over a four year period.

Given the charity set its commercial positioning as being led by value rather than price the fact the tariff was not the cheapest did not contravene this policy. The commission is also aware that Ofgem has reviewed compliance with the regulations on sales in this area and has found no breach of the relevant regulations. The charity told the commission that whether it was the best deal for an individual customer depended on a number of factors, including the timing of when it was entered into.

However the commission is of the view that it is likely (given that the charity's brand endorsement of the tariff would have been understood in the context of the charity's purposes and its work in respect of fuel poverty) that this could have set an expectation amongst some that the tariff would be the cheapest available rather than the broader definition of 'best value'.

The commission did see evidence of review of the ongoing suitability of the E.ON deal. However the length of time between reviews were in our view insufficient given the level of inherent risk in such a commercial arrangement. The commercial and contractual arrangements in place, such as clause 7.6 of the main contract, which states "to the extent reasonably possible the parties must not do anything to prejudice or otherwise affect the goodwill business or reputation of the other party" also provided some ability for Age UK to act should the risks or 'best value' provided by product or deal deteriorate. Notwithstanding this we consider that the processes and considerations in monitoring and taking action in this area to have been insufficient.

Recommendation: That Age UK in future ensure commercial arrangements/partnerships/contracts offer sufficiently robust mechanisms for maintaining the level of benefit provided by a product at launch or have sufficiently robust processes in place to monitor such deals to ensure swift action in the event of a change of circumstances which might expose a risk to the charity, the way it delivers its services or to its beneficiaries.

That Age UK review its processes for product reviews and ensure timelines for reviews are set in accordance with the potential risk posed by the product to the charity's reputation or potential to conflict with furtherance of the charity's purposes.

Was the commission received by Age UK clear and transparent?

The trustees have a duty to ensure that the benefit to the charity from the commercial arrangements is clear and transparent. The commission found that the nature of the commercial partnerships across the range of services, and the fee or commission received by the charity through the trading subsidiary, is not made clear to customers.

The charity does make it clear that its products and services support its charitable work, which should imply to the customer that a product or service is being sold for profit and the charity would receive some form of remuneration. However, this may not offset the implication from the use of the charity brand in this particular context, that the charity has endorsed the product as particularly suitable for the customer as a beneficiary. A beneficiary may very well not understand that the context of the endorsement is commercial.

The charity has a customer charter setting out the principles that guide Age UK and what they can expect from its brand partners. It says that services and products are competitively priced, reflecting the value of their features and benefits, but does not make it clear that products are not necessarily the cheapest available.

Although the customer charter is clear, the commission has found that the charity's links or endorsements to specific products do not set out clearly enough these customer charter principles. Furthermore, it is not clear enough what best value means in the context of the product and customer.

Recommendation: That Age UK review online material and literature to ensure that the basis on which products are being endorsed or supported by the Age UK branding is clear, whether it be price or other factors.

That Age UK clearly identifies on all Age UK branded products that a commission or fee is received by the charity.

We will continue our engagement with the trustees of Age UK and follow up on the outcomes of the required actions and reviews outlined in this report.

Impact of our involvement

In response to the commission's involvement, Age UK has already:

- commissioned a review on how to ensure that its trading activities do not undermine its charitable purposes
- commissioned a rolling review of all products from the perspective of the charity; distinguishing the branding of charitable and trading activities more clearly
- agreed to put in place a new Brand Agreement with group trading companies which will include the Customer Charter and new additional provisions especially on vulnerable customers - the commission recommends in this report that these possible changes/actions are put into place

The commission has also given Age UK the following regulatory advice, to ensure that the trustees are fully compliant with their legal duties:

- the charity should more clearly distinguish between advising beneficiaries on 'money matters' and engaging in commercial fundraising activity; the charity trustees must be aware that beneficiaries are not limited to those who directly seek assistance; the trustees should be particularly aware of the potential for conflict involved in undertaking commercial business activities with the motive of generating income using the charity's brand with a customer base including or defined by their beneficiaries; in respect of each project, they should decide and record how the tension between raising the most money possible on the one hand and furthering the charity's purposes on the other has been reconciled, keeping the position under regular review
- any future participation in the energy market should be carefully considered to ensure it is in the best interests of the charity taking particular care to understand the potential impact on beneficiaries and the reputational risk
- the fee or commission received by the charity (or Enterprises Ltd) should be made clear and transparent to beneficiary customers so they understand the context of the arrangement - this should be at point of sale wherever possible
- Age UK should have systems in place to ensure that commercial activities of its subsidiaries does not undermine the charity's purposes; monitoring of products and services is important in this regard and should be looked at again
- the Age UK Customer Charter should make it clear that products and service are not necessarily the cheapest at all times, and the trustees should consider how potential customers can be made aware of the charter

Wider issues for the charitable sector

Trustees must have effective oversight of any partnership or agreement with commercial organisations, whether undertaken directly by the charity or through a trading subsidiary, and be able to show their decisions are made in the best interests of the charity and they have acted responsibly.

Trustees must be clear about how entering into an agreement with a commercial organisation will help them achieve their charitable aims.

The commission expects trustees to:

- have appropriate processes for oversight and control of commercial partnerships and be able to demonstrate these are in place and effective
- be clear that any partnership is in the best interests of the charity and have appropriate processes to review partnerships to ensure they remain in the best interests of the charity throughout their duration
- consider the risks and benefits to the charity's name and reputation of a commercial partnership and ensure that a charity's name and assets are valued and protected
- make sure that where products or services are sold through or in the name of the charity, the nature of the commercial partnership and the fee or commission received by the charity is clear and transparent

Trustees must routinely monitor the performance of all trading subsidiaries, and of the parent charity's investments in them, to ensure the good and proper use of the charity's assets. They must be prepared to assert the rights of the parent charity as shareholder and must always put the interests of the parent charity first. The directors of the trading subsidiary are responsible for its management, but other major decisions are for the trustees, as representatives of the parent charity.

The commission expects the trustees of charities with a trading subsidiary to:

- monitor the risks to the charity's name and reputation of commercial partnerships and agreements with the trading subsidiary as part of their monitoring of its performance
- act to protect the parent charity if any arrangement is not or is no longer in the charity's best interests