Inquiry Report
Sheffield Reclamation Limited

Registered Charity Number 1025612

CHARITY COMMISSION

A statement of the results of an inquiry into Sheffield Reclamation Limited (registered charity number 1025612).

Published on 15 December 2015.

The charity

Sheffield Reclamation Limited ('the charity') was registered on 2 September 1993. It is a charitable company governed by memorandum and articles of association dated 13 July 1992, as amended on 17 December 1992 and 26 August 1993.

The charity's objects are:

> The relief of people with learning difficulties and mental health problems by providing them with work based rehabilitation, training and other opportunities.

The charity operates a recycling plant in Sheffield which offers employment to approximately 40 men and women of varying abilities with special needs. The students/employees are supported by professionals and volunteers who provided life skills training in the working environment. The proceeds generated from the recycling are used to fund the continued work of the charity and to pay the employees' wages.

More details about the charity are available on the register of charities.

On 16 February 2015 the commission opened a statutory inquiry into the charity under section 46 of the Charities Act 2011. The inquiry closed on 15 December 2015 with the publication of this report.

Issues under investigation

1. The failure of the trustees to fulfil their statutory duty to submit annual accounts, reports and returns for the financial year ending 31 March 2014.

2. The administration of the charity by the trustees, particularly in relation to whether the trustees had fulfilled their legal duties and responsibilities as charity trustees.

3. The financial management of the charity to determine whether the trustees had failed to properly manage the charity's funds and therefore, had put the charity's assets at risk.

4. The extent to which the charity's activities furthered its objects, namely 'The relief of people with learning difficulties and mental health problems by providing them with work based rehabilitation, training and other opportunities'.

Findings

Failure to submit annual accounts and returns

On 20 March 2015 the commission wrote to the trustees advising them that an inquiry had been opened as the charity's trustees were in default of their legal obligations to file accounting information with the commission for the financial year ending 31 March 2014, which fell due on 31 January 2015 and that this was mismanagement and misconduct in the administration of the charity.

An order made under section 84 of the act was also issued directing the trustees to prepare and submit the outstanding accounts.

The trustees contacted the commission on 30 March 2015 explaining that there had been confusion between them and their newly appointed accountant, each thought the other had submitted the accounts and annual reports to the commission. On 10 April 2015 the trustees submitted the overdue accounts.

On 27 May 2015, the commission visited the charity, examined its premises and met with the trustees. The trustees told the commission that following a fire at the charity's premises in 2013 their priority had been to return the factory to productivity and as a consequence they had failed to comply with their obligation to submit annual accounts and returns.

During the meeting the trustees accepted that they were legally responsible for ensuring the annual reports and accounts were prepared and submitted to the commission. The reasons given by the trustees did not excuse non-compliance, however they may be considered to be mitigating circumstances.

Administration of the charity by the trustees

The trustees' failure to submit its accounting information for the financial year ending 31 March 2014 was a breach of their legal duties. The inquiry also sought to examine whether this failure was an indication of wider mismanagement in the administration of the charity.

As set out above, on 27 May 2015 the commission visited the charity, examined its premises and met with the trustees. The inquiry also examined the charity's newly submitted accounts and banking information. Based on the discussion with the trustees, a tour of the charity's premises and an examination of the charity's banking information the commission found no evidence that the trustees' failure to submit the accounting information was indicative of wider concerns regarding the administration of the charity or the trustees ability to comply with their legal duties and responsibilities as charity trustees.

Proper management of the charity's funds and risk to charity's assets

In the administration of their charities, trustees have a duty of act prudently responsibly, honestly and reasonably in all matters, which means that they must exercise such care and skill as is reasonable in the circumstances. This duty is greater if a trustee has (or claims to have) specialist knowledge or experience, which could be gained through their business or profession. Where trustees are not experts it is expected that they would take appropriate advice. Guidance can be found in **The essential trustee: what you need to know, what you need to do (CC3)**.

The charity's income was below the audit threshold, and it could therefore take advantage of concessions in the Charities Act to reduce the amount of information it disclosed in the trustees' annual report and accounts. The report and accounts included all the required information and there were no issues of SORP non-compliance. The commission reconciled the figures in the charity's accounts with the income and expenditure in the bank statements and found that they were correct.

The inquiry established that most of the charity's property and equipment, were destroyed and its buildings significantly damaged 2013 after a fire broke out in a neighbouring property. This caused it to right off £316,000 worth of fixed assets in the accounts, contributing to the loss of £471,534 for the year ending 2013. At 31 March 2014 the charity had net liabilities of £284,176 (2013 net assets of £130,536).

Based on its discussions with the trustees and an examination of the charity's finances the inquiry established that pending resolution of the insurance claim for the fire damage, one of the trustees furnished the charity with a personal loan, the outstanding balance of which shown in the latest accounts was £178,581. The same trustee also stood guarantor for a bank loan to the charity for the sum of £80,000 and had taken out a personal loan on behalf of the charity secured on his personal property as the charity was unable to obtain finance in its own right. The balance of this loan was £184,095. The inquiry found that the charity was heavily reliant on the loans, a bank overdraft and on the continued financial support of the trustee.

An examination of the charity's accounts for the year ending 31 March 2014 found that the charity's liabilities exceeded its assets by £72,759. This was an indicator of insolvency and together with the points outlined above, could have indicated that the charity was experiencing financial difficulties.

The inquiry found that the trustees had a financial plan in place intended to restore the charity to its previous capabilities. The plan was not dependent on a potential insurance company pay out for the damage caused by the fire which was in dispute. The trustees advised the commission that they had obtained a recent valuation which stated that now that the fire damage has been cleared, the charity's assets of the factory and the ground it occupied had returned to a market value which was in excess of its debts. The loans and financial support of the trustee were intended as a short term measure until the charity was able to return to full productivity. There was clear evidence that reclamation work/objects of the charity had increased steadily after temporarily ceasing post the fire. A copy of the financial plan was supplied to the commission.

The charity's activity's reflecting its objectives

The charity is governed by a memorandum and articles of association incorporated 13 July 1992, as amended by certificate of change of name dated 17 December 1992 and special resolution dated 26 August 1993 ('the governing document').

The objects of the charity are 'the relief of people with learning difficulties and mental health problems by providing them with work based rehabilitation, training and other opportunities'.

The inquiry established that the charity offered employment and purpose to approximately 40 men and women of varying abilities with special needs. The charity had 2 employed professionals, assisted by volunteers who provided training in life skills and support to the students/employees in the working environment. The students were given 'On the job' training as well as classroom based tuition. They were paid a wage for their work; received job satisfaction and a sense of purpose. The charity was supported by local social services.

Following the fire in 2013 clearance and repair work had been undertaken and was clearly continuing. Approximately 40 students were still gainfully employed with what recycling could be achieved whilst the renovation was taking place. Alternative rehabilitation and training projects were also taking place.

The sale of the recycled products funded the future activities of the charity.

The inquiry found that the charity was acting in furtherance of its objects but the extent and nature of the charitable work carried out by the charity was not reflected in the annual report to the commission.

Conclusions

As a result of exercising powers under section 84 of the act the inquiry ensured the trustees complied with their legal obligations to submit annual accounting information. The accounts for the financial year ending 31 March 2014 were filed and as a result over £165,000 of charitable income is now transparently and publicly accounted for on the register.

There was no evidence that the trustees' failure to submit the outstanding accounting information was indicative of wider concerns regarding the administration of the charity or the trustees ability to comply with their legal duties and responsibilities as charity trustees.

In conclusion the trustees appeared to be acting in a prudent and reasonable manner, exercising such care and skill as was reasonable in an effort to keep the charity productive.

The trustees accepted criticism that the annual report did not describe in sufficient detail the nature and extent of the charitable work undertaken by the charity and have undertaken to ensure future submissions reflect the work done by them.

Regulatory action taken

The commission used its information gathering powers under section 52 of the act to order and obtain bank records and financial information of the charity relating to the missing years accounts. These were used in connection with the commission's scrutiny of the accounts.

On 20 March 2015 the inquiry exercised powers under section 84 of the act to direct the trustees to prepare and complete the relevant missing annual accounts, reports and returns for the charity and provide copies of these to the commission.

The commission provided regulatory advice and guidance about the trustees' duty to file the charity's annual accounting information. The commission also provided regulatory advice and guidance about the trustees' duty to include comprehensive details of the activities of the charity where the objects of the charity are achieved, in the annual report.

Issues for the wider sector

Trustees of charities with an income of £25,000 or over are under a legal duty as charity trustees to submit annual returns, annual reports and accounting documents to the commission as the regulator of charities. Even if the charity's annual income is under £25,000 trustees are under a legal duty to prepare annual accounts and reports and should be able to provide these on request. All charities with an income over £10,000 must submit an annual return.

Failure to submit accounts and accompanying documents to the commission is a criminal offence. The commission also regards it as mismanagement and misconduct in the administration of the charity.

For those individuals who were not trustees at the initial date of default, when they became a trustee, they became responsible for making good the default.

The trustees of a charity are collectively responsible for its proper management. They should act together and must always bear in mind their over-riding duty to take decisions that are in the best interest of the charity. Further guidance about the obligations and responsibilities of trustees can be found in **The essential trustee: what you need to know, what you need to do (CC3)**.

It is a fundamental duty of all trustees to protect the property of their charity and to secure its application for the purposes of the charity. Trustees are under a legal duty to ensure that the charity's funds are applied solely and reasonably to carry out the charity's purpose, and to be able to demonstrate that this is the case. Section 130 of the Charities Act 2011 requires trustees to keep accounting records for their charity irrespective of their income level. Every charity's accounting records must be sufficient to show and explain its transactions and disclose with reasonable accuracy its financial position. Therefore, in order to show that they are complying with their legal duties, trustees must keep records and an adequate audit trail to show that the charity's money has been properly spent on furthering the charity's purposes for the benefit of the public.

It is important that the financial activities of charities are properly recorded and their financial governance is transparent. Charities are accountable to their donors, beneficiaries and the public. Donors to charity are entitled to have confidence that their money is going to legitimate causes and reaches the places that it is intended to. This is key to ensuring public trust and confidence in charities.

The trustees should be commended for having a soundly based financial plan in place to take the charity through the period of time where it was without an operational premise. The trustees took account of the charity's full financial picture so that it was not solely dependent on a potential insurance pay-out which may not have greatly reduced the charity's risk of insolvency and thus forced closure (if for example the pay-out was not made or was greatly reduced). This is a good example of trustees complying with their duties to act in the charity's best interests and to manage the charity's resources responsibly and demonstrates the sort of careful management and oversight that we would expect.

The financial support given to the charity at a time of difficulty by one of the trustees from their personal finances should also be commended. However in such cases it should be recognise that the trustee would face a conflict of interest if he/she expected the money to be repaid because they would then be exposed to the possibility of having to make decisions about the charity's future and finances that might be in the charity's best interests but might not be in the trustee's personal interests. This conflict of interest would need to be managed in line with our guidance (CC29). Also if interest payments are agreed then, there may be a trustee benefit which would require prior authorisation.