

Regulatory Case Report

MSL Mountaineering Trust (formerly known as The WISCM Trust)

Former Registered Charity Number 1116459



This is a Regulatory Case Report of the Charity Commission's ('the Commission') investigation into MSL Mountaineering Trust ('the Charity') following concerns raised about trustee actions and failure to account for the Charity's funds during the life of the Charity. The Charity had been removed from the Commission's register of charities on 7 July 2010 - following notification from trustee Mark Scott Lewis that it had closed because it had fulfilled its objects.

The Commission's report was published on 18 July 2014.

Initial concerns had been raised by another charity, regarding an inaccuracy in the Charity's accounts. The issue was examined during the investigation and matters expanded to consider other areas of concern that were identified. All of the issues under consideration had the potential to impact on public trust and confidence in the sector.

Accordingly, having regard to the principles of best regulatory practice, the Commission has decided to publish this Regulatory Case Report¹.

The Charity

1. MSL Mountaineering Trust ('the Charity') was registered as a charity on 20 October 2006. Its original name was The WISCM Trust, which stood for the Welsh Independent School of Climbing and Mountaineering.
2. The objects of the charity were:
 - i) to provide or assist in the provision of facilities in the interests of social welfare for recreation or other leisure time occupation of individuals who have need of such facilities by reason of their youth, age, infirmity, disability, financial hardship or social circumstances with the object of improving their conditions of life; and
 - ii) to advance the education primarily of young adults aged between 16 & 25.
3. The Charity's area of benefit was England and Wales.
4. The Charity submitted two sets of accounts for the financial years ending 31 March 2008 and 31 March 2009. In the 2008 year end accounts the income was recorded as £603,080 and the expenditure was £574,023. In the 2009 year end accounts the income was recorded as £973,250 whilst the expenditure was £925,453.
5. The charity also submitted two Annual Return forms for the financial years ending 2008 and 2009.
6. Mark Scott Lewis applied to register the organization as a charity and identified himself as its founder.

¹ More information on Regulatory Case Reports and the criteria for publishing the reports can be found on the Commission's website under the heading '[Our regulatory activity](#)'

7. The first trustees of the charity were: Matthew Nicholas, Richard Hall and David Bellew (now deceased).
8. The final trustees of the charity were: Mark Scott Lewis, Elizabeth Laura Lewis and Edith Fenyimah.
9. At periods between its registration and removal from the register, other people were also named as being trustees of the charity: Simon Bossons, Adele Singh and Shaun O'Neil.

Source of Concern

10. In June 2010 the Commission received a complaint from a registered charity Bethel City Church (now called Breathe City Church) [BCC]. BCC was concerned that The WISCM Trust accounts were inaccurate in relation to gifts of money to BCC. BCC was advised to take up the issue with the charity.
11. In July 2010 - BCC advised that it had been unable to resolve matters. It explained that:
 - it received £17k from The WISCM Trust and not £130k – as the accounts state;
 - the person named as Auditor of the accounts had informed them that he had not actually audited them;
 - it was confused about the charity's connections to other companies, organisations, individuals and charities which were being used by the MSL Mountaineering Trust to try to explain the situation relating to gifts.
12. The trustees of MSL Mountaineering Trust were unable to provide to the Commission details of advice and guidance that they explained they had received, in the operation of the charity.
13. The trustees of MSL Mountaineering Trust were unable to provide satisfactory information in relation to how it had been administered, governed and managed by its trustees.
14. The Commission corresponded with the Charity and BCC over a number of months – gathering information from each party in an attempt to establish an accurate picture of what had happened.

Issues Examined

15. In March 2011 the Commission opened a Regulatory Compliance Case into the Charity. The main issues of concern were:
 - the financial management and controls of the charity;
 - the charity's accounts;
 - the charity's relationship with individuals/companies/organisations/charities;
 - advice and guidance sought and received by the trustees, in the operation of the charity; and
 - the administration, governance and management of the charity by the trustees with regard to the regulatory concerns raised.
16. The scope of the investigation included examining the extent to which the different trustees had been involved in managing the charity, since its registration; and included the gathering of information and evidence not only from paper based sources, but also from meetings with former trustees and other individuals. In relation to meetings with former trustees, the Commission was able to contact all with the exception of Adele Singh and Shaun O'Neil who could not be traced; and Simon Bossons who would not co-operate.

Timescale of the Regulatory Compliance Case

17. The Regulatory Compliance Case opened in March 2011, with substantive investigations concluding December 2011.
18. Publication of this report was delayed until completion of the HMRC investigation and prosecution of Mark Scott Lewis and Elizabeth Laura Lewis, their subsequent sentencing on 1 November 2013 in Swansea Crown Court and the outcome of the Confiscation hearing on 29 April 2014.

Findings on the Issues

The Financial Management and Controls of the charity

19. The Commission used its powers to obtain the charity's bank statements. The Commission found that the information in the bank statements did not match the information contained in the accounts and Annual Returns. Similarly, it did not reflect the information supplied by Mark Scott Lewis, prior to the commencement of the investigation case.
20. Specifically, charity bank account analysis revealed (this list is not exhaustive):
 - no evidence of any payments to Greater Faith Assembly - the 2009 financial accounts record a payment of £462,000;
 - the vast majority of payments were made to Mark Scott Lewis or organisations directly linked to him – Chunky Monkey Ltd, Mark S Lewis Ltd, MSL Mountaineering Ltd, Property Redevelopment, The WISCM Trust (Outdoor Education).
 - £51,800 was paid directly and solely to Mark Scott Lewis in a two and a half month period running from November 2008 to January 2009;
 - £33,408.25 was paid directly and solely to Elizabeth Laura Lewis – at a time when she had no involvement with the charity;
 - £37,979.60 was paid directly and jointly to Mark Scott Lewis and Elizabeth Laura Lewis;
 - £53,000 was paid to a firm of Solicitors – in relation to the purchase by Elizabeth Laura Lewis, of a property used as a family residence;
 - payments to Bethel City Church – including the sum of £43,000 which Mark Scott Lewis had claimed was a personal donation;
 - £78,822.96 received from Merthyr Tydfil County District Council and Merthyr Tydfil County Borough Council;
 - HMRC Gift Aid payments of £849,706.99 received on account of informing
 - HMRC that the charity had received in excess of 3 million pounds of donations;
 - no evidence of donations;
 - the founder had enabled people who were not trustees to sign cheques.
21. During the investigation, it was discovered that a further Gift Aid payment of £36,279.97 was received but had not been deposited in the charity's bank account. This sum was not under the control of the trustees of the charity. Whilst this would be a concern in general terms for any charity, specifically for this charity this action was in absolute direct contravention of its governing document.

The Charity's Accounts

22. The charity's bank statements demonstrated that the charity had received less income than stated in its accounts. There were a number of possible explanations for this discrepancy including:
 - that there was another charity bank account in operation;
 - that there were large dealings in cash;
 - that the figures in the accounts were overstated.
23. Our findings were that the figures in the accounts were overstated.
24. Mark Scott Lewis's explanation was that the accounts were consolidated and that they included associated companies: WISCN Trust Outdoor Education, WISCN Trust Care and WISCN Independent School.
25. The Commission found however, that there was no indication in the accounts that they were group or consolidated accounts. In addition, the Commission studied information relating to these companies and found that they had been dissolved in November 2008 and (in the case of WISCN Trust Outdoor Education), January 2011.

The Charity's Relationship with Other Parties

26. The Commission contacted the auditor named in both sets of charity accounts. He stated that at no point had he ever produced accounts for the charity nor signed correspondence addressed to Simon Bossons - upon which his signature appeared; and furthermore he had never heard of the charity nor any of the people named as being connected to it.
27. Despite initially being told by Mark Scott Lewis that he and the last trustees had no records prior to their time as trustees, late on in the investigation both he and Elizabeth Laura Lewis forwarded a batch of records to the Commission. The Commission noted that the records contained documents that related to other parties, they purported to be:
 - records relating to the relationship between the charity and connected companies (signed by Matthew Nicholas).
 - correspondence signed by BCC (addressed to Simon Bossons) - thanking the charity for two donations totalling £22,250. (£15,000 and £7,250 respectively);
 - correspondence to the charity, signed by Simon Bossons, which stated that he had received paperwork from the charity (relating to Gift Aid declarations, trustee minutes of meetings, CD's of data files and data bases, invoices and expense claims, receipts and bank statements);
 - correspondence from the auditor (addressed to Simon Bossons);
 - records relating to donations made by the charity; and
 - minutes of trustee meetings.
28. The Commission made numerous attempts to contact Simon Bossons but he refused to co-operate. We were therefore unable to verify with him, his involvement with the charity. However, the Commission determined that it would not be proportionate to expend further resources on attempting to contact him as it had become apparent that the main people that needed to be focussed on were Mark Scott Lewis and Elizabeth Laura Lewis.

29. The Commission was able to contact former trustees Richard Hall, Edith Fenyimah and Matthew Nicholas. Both Richard Hall and Edith Fenyimah were immediately co-operative, agreeing to meet to discuss the role that they had played in the charity. They explained that they had taken instruction from Mark Scott Lewis and had trusted him and acted on his guidance. They concluded that they had been misled by him and had failed to independently verify the information that he was supplying to them about the charity's activities.
30. Matthew Nicholas initially refused to meet the Commission – though he did forward minutes of trustee meetings. On examination of the minutes concerns were raised because they appeared not to be genuine.
31. When finally agreeing to a meeting with the Commission Matthew Nicholas explained that minutes of trustee meetings were not accurate. He explained that he and Mark Scott Lewis had found the minutes and that, although he himself is shown as attending some meetings, he had not actually attended them. Further, he stated that he did not think that all of the meetings actually took place. For example minutes showed him as having attended a meeting with Edith Fenyimah - a trustee that he stated he had never met.
32. Matthew Nicholas explained that although his name appeared as the person who had submitted Annual Return information to the Commission, it was Mark Scott Lewis who had submitted it; and similarly although he signed off accounts it was Mark Scott Lewis who had dealt with them.
33. It was the Commissions' view that Matthew Nicholas appeared to lack reliability, in that he had supplied information in the investigation which was misleading. He presented himself as someone who appeared to be misguided in terms of his continuing loyalty to Mark Scott Lewis, whom he was still in contact with.

Advice and Guidance sought by the trustees

34. The Commission could not identify any advice and/or guidance sought by any of the trustees at any point during the charity's existence.

Administration Governance and Management by the trustees regarding Regulatory concerns

35. Unsatisfied with the actions of (and information supplied by) Mark Scott Lewis and Elizabeth Laura Lewis and information supplied by Matthew Nicholas - and being unable to establish contact with Simon Bossons the Commission suspected attempts were being made to conceal irregularities relating to donations and gift aid payments. Consequently the Commission referred its concerns to Her Majesty's Revenue and Customs [HMRC]. Specifically, the referral highlighted that Gift Aid totalling £857,830.65 had been paid to the charity and that the charity would have to have received in excess of three million pounds worth of donations to merit such a payment; and no such amount could be identified as having being received.
36. In addition to the above and during the course of the investigation, both Matthew Nicholas and Richard Hall confirmed that they had been in the habit of signing blank charity cheques. Both stated that the cheques had been presented by Mark Scott Lewis at various times, but without supporting information. Both stated that they had trusted Mark Scott Lewis and believed his explanations about why supporting charity paperwork was missing. Matthew Nicholas stated that he thought it was acceptable to sign blank cheques because it gave flexibility.

37. A consequence of this was that the signing of blank cheques enabled Mark Scott Lewis and Elizabeth Laura Lewis to receive hundreds of thousands of pounds from the charity's bank account as noted above.
38. On 5 April 2011 the Commission met Mark Scott Lewis and Elizabeth Laura Lewis; and on 8 April 2011 the Commission met with Edith Fenyimah.
39. At the meeting on 5 April 2011 Mark Scott Lewis explained that a cheque for £53,000 had been made payable to a firm of solicitors - to cover the costs of his family's house move from Wales to Stoke on Trent; and he also explained that this sum included the deposit on their new house. Mark Scott Lewis further attempted to convince the Commission that funds had been transferred abroad to help people in need – without the funds passing through the charity's bank account. This claim was unsubstantiated. At the meeting on 8 April 2011, Edith Fenyimah stated that she had only ever acted on Mark Scott Lewis' instructions and that the reality was that the charity had not been operational. It was apparent that she was unaware of his actions and those of Elizabeth Laura Lewis; and that she had played no real role in the charity.
40. The information and evidence gathered in this case suggested that Mark Scott Lewis used other people to enable him to facilitate his offences. He appears to have convinced friends, neighbours and acquaintances that being a trustee was little more than an administrative title. He appears to have convinced them that it was acceptable for him to hold all of the charity's records, and manage the charity's accounts without them having any real input. He had possession of the charity's cheque books even when he was not a trustee and persuaded trustees to sign blank cheques which enabled him to misappropriate thousands of pounds from the charity.
41. Elizabeth Laura Lewis was an accredited counter fraud investigator with the Department for Work and Pensions. She deliberately chose to ignore the fact that she was living off criminally laundered money. She purchased property and along with her husband received many thousands of pounds in to her personal bank account quite aside from that received in to their joint bank account. Elizabeth Laura Lewis failed to fully respond to Commission requests for information relating to her time as a trustee and consequently was identified as someone who did not co-operate with the Commission.

Conclusions

42. The Commission received false information from Mark Scott Lewis and Elizabeth Laura Lewis.
43. The Commission concluded from its investigation, that fraud had been committed in that false gift aid claims which included alleged donations in excess of £3,000,000 had been made to HMRC; and in excess of £850,000 had been paid to the charity by HMRC at a time when the charity was actually dormant.
44. The Commission identified that Gift Aid had been spent on a property for the Lewis family to live in and to buy a second house which was renovated and converted in to flats for rent.

Impact of Commission Intervention

45. The level of co-operation that the Commission received from former trustees had a direct impact on them personally in terms of the outcome of the referral to HMRC, as initially two other trustees (aside from the Lewis') were arrested. The impact of our intervention in the matter was therefore one which had a significant effect upon those concerned, and acts as a reminder that the Commission expects to receive full and proper co-operation from trustees.

46. Our referral to HMRC led ultimately to a successful criminal prosecution by HMRC, whereby Mark Scott Lewis pleaded guilty to submitting thirteen fraudulent Gift Aid claims and laundering the money received from them and Elizabeth Laura Lewis was found guilty after trial of money laundering offences.
47. Mark Scott Lewis and Elizabeth Laura Lewis were sentenced on 1 November 2013. Mark Scott Lewis received 4 years imprisonment and Elizabeth Laura Lewis received 18 months imprisonment suspended for two years.
48. The investigation revealed that although the Commission had been informed that the charity had closed, its bank account had not. Further, the investigation also revealed that Mark Scott Lewis had attempted to register another charity in the same name. This action indicated that Mark Scott Lewis was trying to maintain the name of the charity in order to continue with his activities. The Commission's investigation ensured that a criminal enterprise was stopped, thus restoring the reputation of the sector for the future.
49. Following the convictions and on 29 April 2014, HMRC secured Confiscation Orders against Mark Scott Lewis and Elizabeth Laura Lewis. Mark Scott Lewis was ordered to pay back £5,920.04 and Elizabeth Laura Lewis was ordered to pay back £37,820.23 – both by 24 October 2014. Failure to pay will result in a three month default sentence for Mark Scott Lewis and a fifteen month default sentence for Elizabeth Laura Lewis. The above amounts are based on recoverable assets as determined by the court.

Issues for the wider sector

50. Trustees must take steps to ensure that they are properly and lawfully running their charities. They should not leave all transactions and charity business in the hands of one individual – whether that person be a trustee, employee, volunteer, or other connected person. They must act reasonably and prudently in all matters and must always bear in mind that their prime concern is the charity's interests.
51. Trustees must not sign blank charity cheques – and should only sign charity cheques when they have verified the related paperwork/documentation.
52. Trustees must keep full records of all matters that relate to their charity's activities. Financial transactions should always be fully recorded so that full and proper paper trails exist.
53. The Commission expects co-operation from trustees and will view non-co-operation as a serious matter and one which may indicate mismanagement and/or misconduct in office.

