Inquiry Report

My Community UK

Registered Charity Number 1137137

CHARITY COMMISSION

A statement of the results of an inquiry into My Community UK (registered charity number 1137137).

Published on 30 June 2015.

The charity

My Community UK ('the charity') was registered as a charity on 28 July 2010 and was known as Muslim Communities UK prior to 5 December 2012. It is a charitable company and governed by memorandum and articles of association dated 6 April 2010 as amended by special resolution on 13 July 2010 and by certificate of incorporation on a change of name dated 5 December 2012.

The charity's objects include relieving poverty, advancing education and promoting the good health of individuals in need, in particular, but not exclusively, members of the Muslim community.

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

Background to the issues under investigation

On 14 December 2012 the charity commission ('the commission') opened a regulatory compliance case ('RCC') into the charity following receipt of a complaint from a member of the public alleging unmanaged conflicts of interest and related party transactions within the charity resulting in private benefits received by the charity's trustees' families. There was also an allegation that the profits of the charity's trading subsidiary – Muhabba - may not have been transferred back to the charity.

As part of the RCC, the commission met with the trustees, and examined the charity's books and records including its bank statements and other information provided by the charity. The RCC included an inspection visit in June 2013.

As a result of the financial analysis conducted by the commission following the inspection visit and the trustees' failure to adequately account for the charity's finances and its use of funds, the RCC was escalated and, on 3 February 2014, a statutory inquiry ('the inquiry') was opened under section 46 of the Charities Act 2011. The inquiry closed on 30 June 2015 with the publication of this report.

The issues under investigation were:

- whether the trustees had properly managed conflicts of interest including related party transactions and could properly account for expenditure of funds including payments made to connected parties linked to the trustees
- the administration, governance and management of the charity by the trustees; whether and to what extent the trustees had complied with and fulfilled their duties and responsibilities as trustees, including consideration of recovery of funds

When the charity was registered on 28 July 2010 there were three trustees (together known as 'the original trustees'). Two of the original trustees were brother and sister and the third was the son of one of them. None of the original trustees are still trustees. There are currently three trustees ('the current trustees'). One of them is the sister-in-law of one of the original trustees (that original trustee is referred to as 'the former trustee'). The former trustee was trustee from 28 July 2010 to 1 January 2012 and removed from the commission's register as main correspondent on 26 April 2012.

Findings

Issue i) – whether the trustees had properly managed conflicts of interest including related party transactions, and could properly account for expenditure of funds including payments made to connected parties linked to the trustees

Financial discrepancies

The inquiry found that there was a large discrepancy between the income and expenditure on the charity's submitted annual return for the period 5 July 2010 to 30 April 2011 and the charity's bank statements for the same period. The income according to the bank statement evidence was £195,943 but only £12,725 income had been declared on the annual return. The expenditure according to the bank statements was £190,918 but only £11,365 had been declared on the annual return. The original trustees were still the charity's trustees during this period. The signature on the annual return had therefore provided false and misleading information to the commission.

The inquiry found that the charity's accounting records were incomplete, with significant gaps, particularly for the period 5 July 2010 to 30 April 2011. There were no management accounts for the period to 30 April 2011 and insufficient invoices and receipts to account fully for the charity's income and expenditure. Substantial gaps in accounting records and supporting documentation meant that the accuracy of the accounts and activities of the charity during the period 5 July 2010 to 30 April 2011 remain unsubstantiated.

The charity provided the inquiry with trial balances for the years ended 30 April 2012, 30 April 2013, 30 April 2014 and 30 April 2015. The closing balance on 30 April 2012 was £33,118 and the opening balance on 1 May 2012 was £11,231. The current trustees explained that this difference was because not all the outgoings had been recorded in the charity's IT systems and they have now taken steps to rectify this by bringing the running of the IT systems in-house. The inquiry was unable to relate the figures in the trial balance to the charity's accounts and was concerned about the significant difference in the figures.

The project

The current trustees explained to the inquiry that the discrepancy was due to the use of the charity's bank account by an external joint fundraising project known as the Ikhlas Coalition Project ('the Project') which ran an appeal for five charities ('the coalition charities'). They said it was unrelated to the charity's own charitable activities. The former trustee told the commission that he agreed funds would be received by the charity on behalf of the Project to be further passed on to the coalition charities. It was his view that those funds should not have been included in the charity's annual report. The inquiry disagrees.

The charity's bank statements indicated that much of the money received had been paid by electronic transfer either to the former trustee's personal bank account or to a private company ('company A') of which the former trustee was the sole director and 50% shareholder. The current trustees told the inquiry that that company A handled the Project including fundraising and payment allocation and funds raised were paid to company A for allocation to the coalition charities.

The former trustee provided the inquiry with copies of three invoices from company A to the Project totalling £58,782.These refer to expenditure relating to the Project. No further supporting evidence was given in relation to funds relating to the Project apart from a spreadsheet provided by the former trustee and a further spreadsheet by the current trustees which purportedly broke down the amount collected for the Project. However, the inquiry found that these spreadsheets did not match and the information provided did not account for the full amount of expenditure paid out of the charity's bank account. If the Project was an appeal for other charities, the charity should have been paying the funds to the coalition charities. It was in effect instead administering the appeal as trustee with all the responsibility that entails and so the funds for the project were under the custody and control of the charity and should be part of its accounts.

Conflicts of interest and connected party transactions

In addition, the inquiry found there was evidence of unmanaged conflicts of interest, conflicting loyalties and connected party transactions between the original trustees and two other private companies ('company B' and 'company C') that provided computer software and services to the charity. The former trustee was a director of company B and the directors of company C were a current trustee who is related to the former trustee and her husband.

The inquiry identified payments from the charity's bank account to the former trustee, the current trustee who is related to the former trustee and her husband, and companies B and C for computer software and support services. The current trustees could provide no evidence either to show that conflicts of interest had been identified or considered or indeed that there had been formal decision making by the trustee body to agree the payments. The current trustees explained that in some cases the contracts for the provision of services had only been made verbally. The former trustee and companies he was involved with received in excess of £100,000 between 5 July 2010 and 15 January 2013. Over the same time period the current trustee who is related to the former trustee received a payment of £12,000 and the current trustee's husband received payments of at least £28,000.

The current trustees explained that the £12,000 payment was from income the current trustee who is related to the former trustee generated for the charity by undertaking external consultancy work. The current trustees stated that the £28,000 received by the current trustee's husband included payments for setting up an IT infrastructure and server, managing fundraising and marketing campaigns and appeals by email and postal shots, and managing the day to day running of IT systems. The current trustees' view is that the work carried out was worth in excess of the amounts paid. The inquiry saw some evidence that computer software and support services had been provided although it was difficult to assess whether the sums paid were reasonable and these provided value for money. The payments were made in breach of the charity's governing document due to conflicts of interest. Nor did the charity approach the commission to seek authorisation for these payments. The inquiry saw no evidence that conflicts of interest during this period had been managed.

The trading subsidiary

Muhabba was the charity's trading subsidiary. It was a company manufacturing and selling alcohol free perfumes, set up on 10 April 2012 and starting trading in November 2012. When Muhabba was set up, £7,000 was transferred from the charity to buy stock. The current trustees explained that this was a loan, although the inquiry saw no documentation to substantiate this. There appears to have been very little activity by Muhabba between 16 January 2013 and 18 October 2013. All activity appears to have finished at that point. Muhabba was dissolved on 25 February 2014. Muhabba's directors were the three original trustees. Records for the trading subsidiary show receipts totalling £28,525 and payments totalling £28,147. The inquiry did establish that when Muhabba was closed stock valued at £9,890 and £427 in funds was transferred from the trading subsidiary to the charity.

Since the commission's first engagement with the charity, the current trustees had taken some steps to address the regulatory concerns. The current trustees confirmed that neither the former trustee nor any companies connected to him was involved with or still providing services to the charity and the inquiry saw no evidence to contradict this.

The current trustees have now adopted a conflicts of interest policy and the inquiry saw some evidence the current trustees were properly dealing with conflicts of interest and benefits. The charity provided details of all ongoing and recent payments to trustees and connected parties. All these payments had been authorised by the commission where appropriate and were for services needed by the charity. The inquiry saw and verified evidence, including minutes of trustee meetings, that these payments, including the implications for the charity of making them, had been discussed by the trustees. Conflicted trustees had not taken part in the discussions.

Issue ii) – the administration, governance and management of the charity by the trustees:- whether and to what extent the trustees had complied with and fulfilled their duties and responsibilities as trustees, including consideration of recovery of funds

Failure to keep records

The current trustees were unable to produce financial records to account for the discrepancies between the income shown in the annual return and the charity's bank statements for the period 5 July 2010 to 30 April 2011. Section 130 of the Charities Act 2011 states that trustees must ensure accounting records are kept in respect of the charity that are sufficient to show and explain all the charity's transactions. Trustees of charitable companies must preserve accounting records for at least three years from the end of the charity's financial year.

Since the opening of the inquiry the current trustees have improved record keeping, document retention and general governance.

Administration of the project by the former trustee

The inquiry's view was that the charity should not have been used to collect and process donations on behalf of the coalition charities. It was clearly not part of the charity's own activities and the charity exercised no control, management or discretion over them. The charity was in effect being used as a bank by the former trustee for the purposes of the Project.

There was a serious issue with the lack of records in the charity's first year of operation and the use of the charity's bank account for the Project made it difficult to identify which transactions related to the charity and its activities. The commission requested a detailed breakdown of the money received and paid out by the charity on behalf of the Project on four occasions but the current trustees were unable to provide a full breakdown. The inquiry found that there were no meaningful records available to give any assurance as to the accuracy of the figures in the charity's 2011 accounts. The original trustees had therefore failed to adequately account for the charity's income and expenditure in this period.

The inquiry found that the current trustees and the former trustee were unable to provide evidence of the amount of funds used for the Project. The current trustees and the former trustee confirmed that the former trustee alone made the decision to use the charity's bank account to receive and distribute funds for the Project. The other original trustees had not been involved in the decision. The former trustee appears to have had sole responsibility for this arrangement.

For the financial year ended April 2011 the charity's annual return showed an income of £12,724 and the charity's bank statements showed income of £195,943. The current trustees explained the majority of this income was used for the purposes of the Project and provided some evidence to show that £64,990 of this income was used by the Project. However this still left around £130,000 unaccounted for. The charity's bank statement shows that of the payments for the financial year ended April 2011 £47,100 was paid to one of the coalition charities and one other charity and £93,966 was paid to the former trustee or companies associated with him.

The commission contacted the five coalition charities that were involved with the Project. Three of the five charities were able to confirm the amount of funds that they received from the Project. One charity did not respond and one was in liquidation.

The inquiry found no evidence to suggest other original trustees had any knowledge or oversight of the work the former trustee was doing in relation to the Project. The current trustees could not locate records and the former trustee said he no longer held them. The failure to adequately manage the charity's funds and records during this period was also mismanagement and/or misconduct by the original trustees.

Possible restitution action

Given that there had been significant discrepancies between the charity's bank account and annual return figures and that there was a lack of documentation to explain the difference for the period to April 2011 the trustees needed to consider action to recover funds that could not be accounted for. One of the current trustees was conflicted in any decision making because she is related to the former trustee. Whilst under the terms of the charity's governing document there were a sufficient number of non-conflicted trustees available to consider this, the inquiry's view was that the current trustees should consider appointing appropriately skilled new trustees.

Conclusions

The commission concluded that there had been misconduct or mismanagement in the charity on the part of the original trustees. The former trustee in particular had allowed the charity's bank account to be used inappropriately as a banking facility for an external project. There were insufficient records retained relating to this period to demonstrate how all the charity's funds were applied.

The original trustees had failed to account adequately for the charity's past income and expenditure. In particular there was around £130,000 of income unaccounted for, for the financial year ended April 2011. The inquiry found that it was not possible, due to the lack of records, to determine how this was spent.

Whilst payments to connected parties for computer software and support services had been made historically without adequate decision making and recording of decision making, there was some evidence that computer software and support services had been provided. The current trustees have improved in this area; decision making is now documented and a conflicts of interest policy is in place and appears to be followed.

The current trustees have taken steps to improve the governance and accountability of the charity. The commission has used its legal powers to require the current trustees to consider, take legal advice and any appropriate steps to recover funds from the former trustee.

Regulatory action taken

The inquiry obtained and assessed information obtained from the current trustees, the former trustee and other charities, analysed the charity's bank account and financial records, carried out a books and records visit to the charity's premises and examined other charity records.

The commission directed the charity on 16 September 2014 under section 47 (2) (a) and (b) of the Charities Act 2011 to provide information, copies of documents and written answers to questions.

Orders were made under section 52 (1) (b) of the Charities Act 2011 on 4 March 2014 and 16 September 2014 to obtain copies of the charity's bank statements.

On 31 March 2015 the commission issued an order ('the order') under section 84 of the Charities Act 2011 which permits the commission to direct any action to be taken that it considers 'expedient in the interests of the charity'. The order required the current trustees who are non-conflicted to take professional advice relating to assessing the merits of seeking the recovery of funds from the former trustee. The non-conflicted trustees are required to report back to the commission with the decisions taken regarding seeking the recovery of funds and provide the commission with a timetable of the steps they will undertake should they decide to seek recovery of funds.

On 31 March 2015 the commission also issued an action plan to the charity's current trustees containing regulatory advice and guidance and covering steps that it requires the current trustees to take to improve the charity's governance. The action plan addresses the charity's management and administration, and trustees' legal duties and responsibilities, including acting in the best interests of the charity. It includes considering appointing additional trustees, improving transparency on amounts deducted from donations to cover administrative expenses, reviewing the way in which support and governance costs are allocated, investigating trial balance discrepancies and increasing the frequency of bank reconciliations. If the trustees do not take the steps outlined in the action plan they risk being in breach of their legal duties as charity trustees in the administration of the charity.

On 13 April 2015 the charity's current trustees confirmed that only the non-conflicted trustees will seek advice and make a decision regarding whether to seek recovery of funds. The current trustees have also confirmed that they will implement the action plan.

The commission will monitor the current trustees' compliance with the order and the action plan by obtaining and examining evidence that actions have been completed by specified dates. However, the commission will consider re-opening the inquiry if the current trustees fail to take adequate steps.

Issues for the wider sector

Trustees are responsible for the overall management and administration of the charity. They should be decisive, take responsibility and be accountable for controlling their charity. It is important that decisions concerning the charity are taken by the trustees acting together as they are jointly responsible. A charity is entitled to the independent and objective judgment of each of its trustees, acting solely in the interest of the charity. Trustees who simply defer to the opinions and decisions of one of the charity trustees are not carrying out their duties to the charity. A case in which one trustee effectively deprives a charity of the benefit of the considered judgement of the other trustees is an example of poor governance and may amount to mismanagement in the administration of a charity.

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 (CC3)** which can be found GOV.UK.

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.

Conflicts of interest are more likely when there are only a small number of trustees, when trustees are related or closely connected and when the charity has dealings with businesses in which the trustees have interests. It is vital that trustees avoid becoming involved in situations in which their personal interests may be seen to conflict with their duties as trustees. The trustees should put in place policies and procedures to identify and manage such conflict. All trustees must act only in the interests of their charity, and not for their own private interest or gain. Where trustees are family members or otherwise connected the charity should ensure that there are a sufficient number of independent trustees to make a quorum and make decisions especially where there may be related transactions.

Charity trustees must be able to account for all of their charity's income and expenditure. It is important that the financial activities of charities are properly recorded and their financial governance is transparent. Trustees are under a legal duty to ensure that their charity's funds are applied solely and reasonably in furtherance of its objects. They must also be able to demonstrate that this is the case.

When considering whether to pursue the recovery of the charity's assets, trustees must ensure that the decisions are reasonable and in the best interest of the charity. It will not always be cost effective to pursue a loss and trustees should take advice before deciding to take such action.