

Inquiry Report

Khalsa Centre

Registered Charity Number 289347



A statement of the results of an inquiry into Khalsa Centre (registered charity number 289347).

Published on 30 July 2014.

The Charity

Khalsa Centre ('the Charity') was registered on 28 May 1984. It is governed by a constitution dated 14 April 1984.

The Charity's objects as described in the constitution are:

*"To advance the education of the Sikh community in greater London and home counties; and
To provide recreation and leisure-time facilities in the interests of social welfare for those members of the Sikh community who have need of such facilities by reason of their youth, age, infirmity or disablement, poverty or social and economic circumstances."*

The Charity's entry on the Register of Charities can be found here <http://www.charitycommission.gov.uk/find-charities/>

Background and Context Leading up to the Opening of the Inquiry

In June 2009 the Charity Commission ('the Commission') opened a Regulatory Compliance Case ('RCC') into the Charity following a complaint that the May 2009 election had not been carried out in accordance with the Charity's constitution.

Early engagement with the Charity identified that there was an on-going dispute within the Charity which had led to the failure of the election. As a result of this the Charity did not have properly appointed trustees capable of administering the Charity.

In December 2009 the Commission advised that in order to regularise the situation the Commission would assist the Charity by using its statutory power in the then section 18 of the Charities Act 1993 to appoint Interim Trustees for the purpose of calling an independently supervised election. However, due to prolonged disagreements amongst the Charity's membership and the inability of individuals to resolve personal differences the process of identifying suitable individuals willing to be appointed as Interim Trustees became protracted. After extensive engagement with the Charity four individuals were nominated to become Interim Trustees. As the Commission was using its statutory powers, policies and procedures had to be followed and each of the nominated individuals underwent a vetting process to ensure they were not disqualified from acting as a trustee under charity law.

In addition, when appointing Interim Trustees the Commission has a legal duty to publish a draft Order giving one month's notice of its intention to do so, allowing for interested parties to raise any objections. The draft Order was initially published in February 2011; however, an objection was received regarding the suitability of the proposed Interim Trustees. This objection was considered under the Commission's Decision Review process.

On 16 May 2011 the Commission's reviewer, having fully considered the submissions made by the applicants, concluded that the Order should be made and sealed. Overall the reviewer was satisfied that there was no evidence to suggest that the Order should not be made and that the elections should proceed as soon as possible.

On 17 May 2011 the Commission made an Order ("the First Order") under section 80(2)(b) of the Charities Act 2011 appointing four Interim Trustees to the Charity, for a period of six months. The purpose of the Order was to allow the Interim Trustees ("the Interim Trustees") to agree the Charity's membership and carry out an election.

Between 17 May and 28 August 2011, the Interim Trustees, supported by a nominated Independent Election Supervisor ("IES"), followed the terms of the First Order and proceeded toward an Annual General Meeting ("AGM") and election which was planned to take place on 28 August 2011.

On 28 August 2011 the Commission was informed that 15 individuals were elected as the Charity's trustees at a meeting held on that date. However, during that period the Commission received a number of complaints about the conduct of the election. The Commission reviewed the election process and formed the view that there were flaws in the process that were so significant that it could not be said that a proper AGM had been held. Therefore in the Commission's view the 15 individuals had not been properly appointed as charity trustees and the Interim Trustees remained in place. However, in accordance with the First Order the Interim Trustees could only remain in office until 16 November 2011.

At the conclusion of the six months no successful action had been taken by the Interim Trustees. Therefore on 3 October 2011, the Commission issued a varying Order ("the Second Order") under section 89(5) of the 2011 Act. The main purpose of the Second Order was to extend the term of office of the Interim Trustees until April 2012, giving them time to organise an election. The Second Order also varied some of the terms of the First Order so as to clarify the actions to be taken by the Interim Trustees to ensure that a valid election of charity trustees could take place.

The Second Order expired on 3 April 2012, again with no successful action being taken. The Second Order was also considered under the Commission's Decision Review process and upheld.

During the term of their appointment, the Commission provided clear regulatory advice and guidance to the Interim Trustees on a number of occasions on the steps to be taken to resolve their dispute and conduct an election. Independent Election Supervisors were also appointed in order to oversee the process. However, as the Interim Trustees were unable to work together cohesively and put aside personal differences and work together in the best interest of the Charity the relationships between them became irreconcilable.

It became clear that the essence of the dispute within the Charity was a contested membership list and the failure to properly determine who may be relevant members. This in turn had a detrimental impact on the ability for a successful election to be held to resolve the issues surrounding trusteeship.

In addition, following a financial analysis of the Charity's bank accounts in March 2012 the Commission raised a number of questions with the Interim Trustees about inconsistencies in the Charity's finances, specifically deposits and transfers into the Charity's accounts which could not be reconciled. Further questions were asked in June 2012; however no substantive response was received from the Interim Trustees on these issues.

Issues Under Investigation

Based on the Commission's extensive engagement with the Interim Trustees and other individuals connected to the Charity it was not clear who had effective and continuing control of the management of the Charity or its assets. Whilst the situation remained unresolved it was the Commission's view that there was potential for significant ongoing risks to the Charity's assets, property and ongoing operations.

On 25 October 2012 the Commission opened a statutory inquiry into the Charity under section 46 of the Charities Act 2011. The inquiry closed on 30 July 2014 with the publication of this report.

The statutory inquiry ("the Inquiry") was opened to investigate and resolve the following key issues:

- The financial controls and financial management of the Charity, with a view to establishing if there was risk to charitable funds and/or other property; and
- The future governance of the Charity.

In the absence of any validly appointed trustees the Inquiry took the decision to communicate with the former Interim Trustees and the individual who was in control of the Charity's finances in their capacity as trustee of charitable funds. The Inquiry also produced statements for the Charity's community which were translated and placed on view at the Charity's premises to ensure the community and members were kept informed of the major developments in the Inquiry.

Findings

1. The financial controls and financial management of the Charity, with a view to establishing if there was risk to charitable funds and/or other property

The Inquiry found that the inability of the former trustees and former Interim Trustees to put personal interests aside and put the interests of the Charity first, and in the case of the Interim Trustees to comply with the Orders, directly contributed to the situation in which the Charity found itself.

At the time the Inquiry was opened there had been no validly appointed trustees in post at the Charity since April 2009, consequently, it was not possible for the Commission to determine if during that time decisions had been made in the best interests of the Charity. Furthermore it was not possible to determine if there had been anyone who had properly fulfilled their duties as charity trustees, in particular to act prudently and to adequately safeguard the assets of the Charity.

Whilst the Charity continued to operate in the manner that it had there was a risk that the beneficiaries and supporters of the Charity would lose trust and confidence in the Charity. There was also a potential risk to the Charity regarding any future donations and the ability of the Charity to continue its activities. In addition, the longer the membership of the Charity remained contested, membership fees potentially coming to the Charity would remain unpaid.

Checks undertaken with the Land Registry revealed that the registered owner of the Charity's premises was "The trustees of the Charity known as the Khalsa Centre". As there were no validly appointed trustees there was a continuing risk that the Charity's assets were not being adequately protected.

The absence of validly appointed trustees had also resulted in the accounts filed for financial years 2009 to 2011 being signed off by individuals who did not have the authorisation to do so. In addition, the accounts for financial year 2012 remained outstanding because there was no properly elected trustee board. The Commission could therefore not be satisfied that all of the charity's assets had been properly accounted for.

On 18 December 2012 the Inquiry conducted a records inspection at the Charity's premises. As a result the Inquiry found there was no risk to charitable funds based on the day to day running of the Charity. The specific financial concerns identified by the Commission prior to opening the Inquiry were also resolved during this inspection.

The Inquiry found:

- One specific transfer for £10,000 that could not be reconciled was an error by the bank whereby the bank transferred £10,000 out of the current account into the Charity's savings account twice and then returned £10,000 once the error had been identified;
- A deposit of £1,654.11 that could be not attributed to a donation was found to be a transfer of funds following a closure of another bank account held by the Charity. The Commission examined the corresponding bank statement for the closed account and also a letter from the Charity instructing the bank to close the account and transfer the money to its current account; and
- The banking of a cheque for £15,000 was attributed to the cancellation of the hire of the premises for a wedding. The Charity received three payments of £5,000 into its bank account for the wedding and the cancelled booking. The Inquiry viewed a copy of the booking form which detailed receipt of the various £5,000 payments and the subsequent cancellation.

However whilst the Inquiry had not substantiated any specific concerns regarding the day to day financial management of the Charity, as there were no validly appointed trustees, there continued, in the Inquiry's view, to be a general risk to any funds held by the Charity and funds that may come to the Charity due to the lack of proper governance at the Charity.

Following the records inspection, the Inquiry was of the view that the Charity did not have enough general funds to cover the costs of an interim manager, therefore, this was not pursued as an option available to the Inquiry at that time. The Inquiry was aware that the Charity had in the region of £150,000 in a savings account but at the time the Inquiry understood that these funds were restricted funds and could only be applied for the purpose of building and renovation at the Charity's premises.

On this basis the Inquiry gave consideration to what other options were available in order to establish proper governance at the Charity.

Under section 111(1)(b) of the 2011 Act the Commission has the power to determine the membership of a charity. On 8 March 2013 the Charity was asked to provide information about the Charity's membership records and the process previously used by the Charity to confirm or authorise membership to assist the Inquiry in deciding if determining the membership was a viable option. The Inquiry followed up this request for information with a meeting on 22 April 2013 where the Charity's membership records were submitted to the Inquiry and the process of determining the membership was considered further.

In June 2013 the Inquiry was informed by some members of the Charity that the funds held by the Charity in its savings account were not restricted funds and had simply been collected for the general intention of the building project. The funds had not been specifically raised on this basis. To manage the risks arising from this conclusion, a statement to the Charity's community was posted in the Charity's premises setting out the Inquiry's view that the funds were not restricted. The community were asked to make representations if they disputed this view no later than 5 August 2013. No representations were received.

The Inquiry acted on its concluded view that the Charity's funds held in the savings account were not restricted funds and could be utilised to cover the costs of an interim manager. The Inquiry had strong reason to believe, based on the evidence available to it, that there had been mismanagement in the administration of the Charity by the former trustees and former Interim Trustees and that it was necessary to take temporary and protective steps to protect the Charity's property, in particular, by appointing an independent interim manager ("Interim Manager") to take over the affairs of the Charity and to arrange and facilitate an election to establish a legally appointed trustee body.

The Commission therefore took steps to safeguard charitable funds where charity trustees were not able or not willing to take steps, in pursuance of its public trust and confidence objective.

2. The future governance of the Charity

An Order appointing Mr Michael King of Stone King LLP as Interim Manager to the Charity was made on 3 October 2013 under section 76(3)(g) of the 2011 Act.

The Interim Manager was appointed to take over the management and administration of the Charity in order to:

Issue1: Restore Governance

- Determine the membership of the Charity in so far as possible by reference to the Charity's current constitution;
- Call, arrange and supervise at an appropriate time an election for the appointment of a new executive committee;
- Review the Charity's constitution to ensure that the Charity could operate effectively going forward and if appropriate present proposals for change to the members of the Charity; and
- Hand over the management and administration of the Charity to the newly elected executive committee.

Issue 2: Charity accounts

- Review the Charity's accounts for the financial years ending 2009 to 2011 inclusive and where necessary amend, sign off and file the accounts with the Commission; and
- Compile, sign off and file with the Commission the Charity's accounts for financial year ending 2012.

Interim Manager's Activities

During the first three months of this appointment the Interim Manager undertook a membership application and verification process to determine the membership of the Charity, without which it was clear that there could not be a fair election of trustees of the Charity. The Interim manager held meetings with key members of the Gurdwara and later with a wider group of members to explain the process and rationale for the appointment. A total of 419 members were registered and verified through the process.

This was followed by an Extraordinary General Meeting (EGM) at the Charity on 16 February 2014. At the EGM a new trustee body was elected by the newly determined membership. The Inquiry has been advised that 87% of the Charity's registered membership voted in the election.

On 9 January 2014 the Interim Manager informed the Inquiry that a number of serious allegations relating to the conduct of various members of the Gurdwara, but in particular allegations regarding the volunteer who was generally regarded by the members as "the President", had been reported to him. These allegations ranged from fraud and receipt of unauthorised benefits to abuse of children and vulnerable people. There was some degree of evidence in support of some of the complaints. It was agreed that, should the Interim Manager not be in a position to address the allegations in a formal way, his position – and more importantly the election of trustees - would be undermined and may impact negatively on the main aim of the appointment which was to establish proper governance back at the Charity.

On 7 February 2014 the Interim Manager's appointment was varied under section 337(6) of the Charities Act 2011, to widen his responsibilities to include the following:

- Issue 3: To review and manage the various allegations and complaints relating to the management and administration of the Charity and/or its personnel which have been brought to the Interim Manager's attention in the discharge of his duties under the original Order;
- Issue 4: To appoint and monitor the supervision of an Administration Officer in the Charity whose role will be to assist in regularising the financial and administrative activities of the Charity;
- Issue 5: To address any issues in relation to the Charity's outstanding tax liabilities;
- Generally to discharge such other functions that the Commission may request.

Upon the variation of his appointment the Interim Manager took steps to address the allegations reported to him during his appointment. A member of the Charity was suspended from his voluntary position working within the Charity's office pending the outcome of the investigation into the allegations and complaints and an independent Administrative Officer was appointed to assist with administration of the Charity.

The Interim Manager appointed a Chartered Accountant, John Decruz-Young, as his Administrative Officer and installed him on a part-time basis in the Charity's office. He was thus the "eyes and ears" of the Interim Manager until the end of the latter's appointment.

On 26 February 2014 the Interim Manager submitted a report to the Commission setting out his findings regarding Issue 3 above. This report was also circulated to the newly elected executive committee and other interested parties. Further details regarding this report are set out below under the Interim Manager's findings/comments.

On 13 March 2014 the Interim Manager submitted Trustee Reports and signed Accounts for financial years 2009, 2010, 2011, 2012 and 2013.

On 26 March 2014 following the handover of trusteeship to the newly elected trustees at the Charity, the Commission determined that the Interim Manager had fulfilled the terms of his appointment and he was discharged from the Charity.

Interim Manager's findings/comments

I found that, while some members of the Charity wanted no change and were happy for the Gurdwara to continue to be managed by the volunteer known as "the President" (although he had not been elected as such), many were keen to enhance the religious and pastoral activities run for the Sikh community in and around Tooting and wanted the Charity to be run by a freshly-elected group of trustees.

"The President" and his small team of family and friends had worked hard to keep the Gurdwara going in the absence of elected trustees but there was a lack of transparency in what they did and very little accountability to members and that led in part to the allegations which had to be dealt with. The lack of extraneous evidence to support allegations of financial impropriety and claims that the President had been disruptive and deceptive about the role of the Interim Manager meant that it was difficult to come to a firm view: many of the allegations involved simply assessing one person's word against another. However, what became very clear was that the President and his immediate group of supporters held absolute sway over the day to day running of the Charity, a situation which was clearly incompatible with good charity governance.

When I was appointed the Register of Members contained over 700 entries. Of these, many were one entry for two people (usually a Mr and Mrs couple), half appeared to have joined in 2011, before the previous failed election; several members appeared to be living at the same address and I took the view that some could be "ghost members" which indeed was one of the allegations put to me by several members. I took the view that we should create an entirely new Register and that old and new members alike should be asked to register.

To deal with the allegations of ghost members I decided that an important part of the process would be the proper identification of all members. This was by no means easy as many members or applicants for membership did not have formal ID. I appointed a group called "ID Checkers", drawn from the two distinct factions which had become apparent and they were most helpful, but the lack of formal ID and to some extent the inability of some applicants to understand English undoubtedly delayed the process and caused arguments on which I had to adjudicate.

In the event 419 members were registered within the prescribed time limits. The election took place on 16th February 2014 and that entailed checking ID's, issuing ballot papers and voting for 9 trustees by secret ballot.

In accordance with the Charity's constitution, voting had to be in person at the meeting; postal ballots and proxies were not permitted. 362 members actually voted, although 19 ballot papers were spoiled. The votes were then counted and announced to the assembled EGM and subsequently reported to the Commission.

Following the election I proposed to the new trustees that they should incorporate the Charity as a company limited by guarantee to provide the protection of limited liability but also for a more certain election process and turnover of trustees. As at the date of this report, I have not heard whether or not the executive committee have decided to act on my advice.

Michael King

Conclusions

The Commission concluded that there had been mismanagement in the administration of the charity by the former trustees and former Interim Trustees, which was only resolved by the appointment of an Interim Manager.

Having regard to all the circumstances, and in particular to the possible risk to the Charity's assets and its operational activities, the Inquiry was therefore of the view that the appointment of an interim manager would be a proportionate step. The Inquiry was of the view that there were no other less intrusive way which would adequately protect the assets and interests of the Charity, and to restore adequate and ongoing governance.

An Order appointing Mr Michael King of Stone King LLP as interim manager to the Charity was made on 3 October 2013 under section 76(3)(g) of the Charities Act 2011 and this appointment was discharged on 30th April 2014.

Regulatory Action Taken

The Inquiry made two visits to the Charity's premises on 18 December 2012 and 22 April 2013 and provided regulatory advice and guidance.

The cost of the Interim Manager appointment from 3 October 2013 until 30th April 2014 was in total £49,000 plus VAT; this includes £5,000 incurred obtaining professional accountancy advice.

Issues for the wider sector

1. An internal conflict is a serious disagreement within a charity, which if left unresolved, can lead to a breakdown in the effective governance and day to day management of a charity. Internal conflicts most often occur in membership charities, but can also arise within the trustee body and between trustees of different charities. If trustees can take action to resolve issues themselves, the Commission expects them to do this. In internal conflict situations we expect those involved to have exhausted all other means of resolving the conflict before approaching the Commission. A dispute can be especially destructive when the issue centers on who are the valid trustees of the charity and it is often the case that because governance has fallen into disarray there are no validly appointed trustees.

The Commission's publication *Conflicts in your charity* A statement of approach by the Charity Commission makes clear that it is the responsibility of the parties to resolve the conflict and it is only in limited circumstances that the Commission might become involved (see also the Commission's new Risk Framework, published in January 2012). It is however important, if the Commission does become involved, that the parties in dispute display a firm commitment to resolving their differences and agree to work cohesively with the Commission and each other and do in fact do so. If that cannot be agreed and adhered to it is highly unlikely that the Commission would be able to resolve the dispute. If the Commission has to intervene it may result in regulatory action being taken and it can cost the charity significant expenses that otherwise could have been avoided.

2. Trustees must ensure that their charity has adequate financial and administrative controls in place, and that they comply with their statutory obligations to maintain the accounts and records of their charity and file them with the Commission on time.. Published annual accounts are the primary means through which trustees report on their stewardship of their charities and show public accountability.
3. The Commission expects trustees to keep constitutional and governance arrangements under constant review and to move quickly to resolve any anomalies which may arise. For charities which have members, it is essential accurate and update records are kept of members to ensure that problems do not arise because it is not clear who is a member at any particular time. Where provisions are specified in their governing document about the conduct of elections for new trustees it is essential that trustees follow these requirements.
4. Charity trustees should familiarise themselves with relevant Commission guidance on an ongoing basis to ensure that they are aware of current legal requirements and good practice.

