

Inquiry Report

The Barry Green Memorial Fund

Registered Charity Number 1000492



A statement of the results of the class inquiry into double defaulter charities in particular The Barry Green Memorial Fund (registered charity number 1000492) ('the charity').

Published on 26 August 2015.

The class inquiry

On 20 September 2013, the Charity Commission ('the commission') opened a statutory class inquiry ('the inquiry') into charities that were in default of their statutory obligations to meet reporting requirements by failing to file their annual documents for 2 or more years in the last 5 years and met certain criteria, including that

- the charities were recently (or in the case of charities that would become part of it in due course, would be) given final warnings to comply by a specified date
- on the day after the specified date they were still in default (partially or otherwise)

At the point a charity met the criteria they would become part of the inquiry. The commission started by looking at and sending final warnings to charities with a last known income over £500,000 and then moved on to those over £250,000 and then those with a last known income of between £200,000 and £249,999.

The charity

The charity was registered on 2 October 1990. It is a trust governed by a Trust Deed executed on 7 September 1990.

The charity's objects are:

To advance such charitable purposes for the benefit of the public as are directed to the rescue, maintenance and benefit of cruelly treated animals and to advance such charitable purpose for the benefit of the public as are directed to the prevention of cruelty to animals or to such other charitable objects as the trustees consider may appropriately be pursued in conjunction with such prevention.

More details about the charity are available on the [register of charities](#) ('the register').

Issues under investigation

The charity failed to submit annual accounts, reports and annual returns to the commission required for the financial years ending 5 April 2009 through to 5 April 2013. During the whole period of default, the charity was sent a number of computer generated reminders from the commission regarding the submission of their annual accounting documents. The charity remained in default of its obligations under the Charities Act 2011 ('the act').

On 5 January 2015, the charity was contacted by telephone and written to by the commission notifying the charity that it was required to supply accounts by 25 January 2015, and warning the charity that if it remained in default after this date it would become part of the inquiry.

The charity failed to submit its outstanding documents by the deadline and became part of the inquiry on 28 January 2015.

While the charity was part of the inquiry, the accounting information for the financial year ending 5 April 2014 became due.

The inquiry was confined to dealing with the trustees' misconduct or mismanagement¹ and remedying the non-compliance in connection with the annual accounting documents.

The trustees gave 2 reasons for non-compliance. The first was considerable disruption to the activities of the charity following the death of one of the trustees. The second reason given was the need to instruct a new accountant.

On 2 March 2015 the charity submitted annual accounts and reports for the financial years ending 5 April 2009 through to 5 April 2012.

On 31 March 2015 the charity submitted annual accounts and reports for the financial year ending 5 April 2013.

On 21 May 2015 the trustees advised the commission that the final set of outstanding records for the year ending 5 April 2014 would not be ready for submission to the commission until mid June, as their accountant had been on leave.

On 22 June 2015 the charity submitted the final set of outstanding annual accounts and reports for the financial year ending 5 April 2014.

When the charity's missing documents had all been submitted, the accounts were referred for scrutiny by the commission's accountants and if any issues arise from that they will be followed up separately.

¹ The terms misconduct or mismanagement are taken from section 76 of the Charities Act 2011. Misconduct includes any act (or failure to act) in the administration of the charity which the person committing it knew (or ought to have known) was criminal, unlawful or improper. Mismanagement includes any act (or failure to act) in the administration of the charity that may result in significant charitable resources being misused or the people who benefit from the charity being put at risk. A charity's reputation may be regarded as property of the charity.

Conclusions

The charity's trustees were in default of their legal obligations to file accounting information with the commission. This was misconduct or mismanagement in the administration of the charity and a breach of their legal duties.

All of the charity's trustees are legally responsible for ensuring accounting information is prepared and submitted to the commission as required. The reasons given by the trustees for non-compliance are not legitimate excuses.

As a result of the inquiry, the commission ensured the charity complied with its legal obligations to submit their annual accounting information. The 6 sets of accounts were filed and as a result over £888,148 of charitable income is now transparently and publicly accounted for on the register.

The charity ceased to be part of the inquiry when it was no longer in default of its accounting obligations. This happened on 22 June 2015 when the charity filed the last outstanding documents.

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 will be used in connection with the commission's scrutiny of the accounts.

On 20 February and 2 June 2015 respectively, 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.

Issues for the wider sector

Trustees of charities with an income of over £25,000 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 not greater than £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 or 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.

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.