



CHARITY COMMISSION
FOR ENGLAND AND WALES

Inquiry Report

Hospice Aid UK

Registered Charity Number 1092575

A statement of the results of the inquiry into Hospice Aid UK (registered charity number 1092575) ('the charity').

Published on 21 December 2016.

The charity

The charity was registered with the Charity Commission ('the commission') on 24 June 2002. It is incorporated and governed by a memorandum and articles of association registered on 21 March 2002, as amended on 5 July 2006.

The charity's objects are:

- to facilitate and promote the relief, care and treatment of the sick, especially of the dying, and the support and care of their families and carers and of the bereaved
- to facilitate and promote the charitable activities of independent hospices
- to undertake any other charitable purpose to advance the education of the public, in particular by the provision of vocational training

The charity aims to further its objects through the provision of grants to hospices on a national basis for their general purposes with a particular emphasis on patient care and treatment.

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

Background to the issues under investigation

On 24 January 2014 the commission opened an operational compliance case into the charity due to concerns raised by members of the public and other charities regarding the charity's fundraising practices, high fundraising costs and limited direct charitable expenditure. The case followed previous commission engagement with the charity in relation to similar issues and complaints dating back to 2007.

During the commission's compliance case, it was established that the charity had entered into a 7 year direct mailing agreement ('the agreement') in 2012 with a specialist direct marketing and fundraising agency ('the fundraising agency')¹.

The commission sought information from the charity's trustees to examine the nature of the agreement, the planned and actual financial performance of fundraising activity operated under the agreement and whether the decision to enter into it had been in the best interests of the charity. The commission established that the current trustees were not in post at the time of entering into the agreement and this decision was made by the charity's former trustees.

¹ Direct mail fundraising is sending mail to the public with the aim of raising money. There are 2 types of direct mail fundraising: donor renewal mail and donor acquisition mail. Donor renewal, or warm, mail is sent to existing donors whereas donor acquisition, or cold, mail is sent to people who have no prior involvement with the charity. In order to establish a list of warm donors, direct mailing programmes require considerable initial investment and resources in order to work successfully.

Serious regulatory concerns were identified in respect of the terms of the agreement, which included the proportion and timing of public donations received by the charity.

The commission was also concerned about the charity's viability and its ability to continue operating due to the apparent poor financial performance of the fundraising activities operated under the agreement and the charity's financial position at the end of the financial year in 2013.

Of additional concern to the commission was the apparent low proportion of charitable funds that were being applied directly for the charity's purposes.

The commission sought information prior to the opening of the inquiry about the management and administration of the charity by its trustees. The commission identified further concerns regarding the trustees' control and oversight of the charity's overheads, in particular relating to the payments and management of a full time chief executive officer ('CEO').

Given the seriousness of these regulatory concerns, the commission opened a statutory inquiry under section 46 of the Charities Act 2011 ('the act') on 28 August 2014. The trustees were informed of the opening of the inquiry on 16 September 2014.

Inquiry scope

The inquiry was opened in order to examine serious regulatory concerns over the governance and management of the charity and how the trustees were discharging their legal duties.

In practice, the inquiry considered the following specific matters:

- the management and administration of the charity by the trustees, in particular the proportion of funds applied directly for charitable purposes, the control of overheads and expenditure, and the oversight of the CEO
- the agreement with the fundraising agency, in particular:
 - the reasonableness of the former trustees' decision to enter into the agreement and its impact on the charity
 - the current trustees' oversight and management of financial performance of fundraising activities operated under the agreement
 - the transparency and reporting of financial performance under the agreement in the charity's annual reports and accounts
- the extent of transparency in the fundraising activities conducted on the charity's behalf about its agreement with the fundraising agency and the potential impact of this on public trust and confidence in the charity
- whether or not the trustees were complying with and fulfilling their legal duties and responsibilities as trustees under charity law

Findings

During the course of this inquiry, the commission engaged closely with and sought responses from the charity's trustees in order to obtain further information about the charity's agreement with the agency and the wider concerns regarding the management and administration of the charity.

The management and administration of the charity by the trustees in particular the proportion of funds applied directly for charitable purposes, the control of overheads and expenditure, and the oversight of the CEO

The inquiry established that for the period from 1 April 2008 to 31 March 2012, which was ostensibly prior to the charity entering into the agreement on 1 March 2012, the charity consistently applied a low percentage of its gross income (an average in each of these years of 15.6%) on grants to hospices which directly furthered the charity's purposes. Following the commencement of the agreement in 2012, the percentage of funds being applied directly for the charity's purposes as a percentage of the gross income deteriorated to an average of 5.5%, an extremely low percentage of funds which raises serious regulatory concerns. The following table details the charity's income and expenditure in each financial year since 2008, the amount applied directly in furtherance of the charity's purposes and this as a percentage of the annual income.

Table A

Financial year	Gross income	Total expenditure	Grant expenditure	Grant expenditure as a % of gross income
31 Mar 2008	£262,334.00	£260,691.00	£66,735	25%
31 Mar 2009	£260,841.00	£242,777.00	£35,484	13.6%
31 Mar 2010	£217,440.00	£236,304.00	£33,690	15.5%
31 Mar 2011	£243,996.00	£221,937.00	£35,605	14.6%
31 Mar 2012	£132,023.00	£163,972.00	£2,557	1.9%
31 Mar 2013	£263,777.00	£275,340.00	£20,343	7.7%
31 Mar 2014	£537,211.00	£582,432.00	£28,276	5.3%
31 Mar 2015	£647,270.00	£672,405.00	£30,306	4.7%
Total	£2,564,892	£2,656,128	£252,996	9.8% (average)

To illustrate the application of the charity's funds, in the annual accounts ending 31 March 2011, the charity said:

"The main aim of the charity during the year ended 31 March 2011 was to continue fundraising through the existing team of fundraisers throughout the country and to increase fundraising from local and sponsored events and auctions. The objective is to distribute monies to hospices in line with the grant making policy.

During the year the charity raised funds totalling £243,996 (2010: £217,440) from public collections, legacies and donations. The majority of this money was raised by fundraisers collecting money in collection tins at supermarkets and high street stores. The fundraisers distribute leaflets to the public and in return for a donation the donors are given badges or stickers. The money raised enabled the charity to make donations totalling £35,605 (2010: £33,690) to over 30 hospices across the UK (2010: 39 hospices)."

The 2011 accounts declared that £116,112 was spent on fundraising costs, and £16,629 on governance costs. Of the £89,196 stated as spent on 'charitable activities and distributions to hospices', £53,591 was declared as 'support costs' connected with that, leaving £35,605 for application as grants as 'direct costs'. The charity effectively spent £1.50 in support and grant processing costs for every £1 it distributed in grants to hospices.

In the period from 2008 to the end of 31 March 2012, around 84.4% of income donated by the public was consumed by fundraising, support and governance costs. Concerns were raised with the charity by the commission and third parties during this period about the proportion of funds collected from the public that were being applied directly in furtherance of its purposes.

The inquiry established that during the financial year ending 31 March 2012, the charity suffered a serious drop in income of 46% from the previous year (2011: £243,996 dropping to 2012: £132,023). However the fundraising, governance and support costs remained high at £161,415 during this financial year and only £2,257 was applied in grants directly in furtherance of the charity's purposes - less than 2% of the income that year. These costs comprised of the declared 'support costs' connected with direct costs of charitable activities and distributions to hospices of £50,633, governance costs spend of £25,060 and £85,722 on the costs of generating voluntary income - ie fundraising costs.

The UK suffered difficult economic circumstances during the year ending 31 March 2012. The annual UK giving survey for that period run on behalf of the National Council for Voluntary Organisations and the Charities Aid Foundation reported that charity donations for the sector at large fell by 15%². The charity reference this climate in the 2013 annual accounts.

However, it is the inquiry's view that a further significant contributory factor to the dramatic 46% fall in the charity's income recorded for 2011-12 was the reputational damage suffered because of the consistently low proportion of income applied directly in furtherance of the charity's purposes over a sustained period. The inquiry considers that this issue along with the economic factors at large appears to have critically affected the charity's ability to fundraise and the scale and commercial efficiency of the charity's fundraising activities.

Although there was some improvement in grants to hospices by the charity in the following year, the proportion of gross income applied directly for charitable purposes for the financial year ending 31 March 2013 still remained extremely low - at around 8%.

The financial health of the charity was further affected by a continued mismatch between the charity's income and the charity's overheads and expenses in the 2 years from 1 April 2011 to 31 March 2013. This led to the erosion of the charity's limited reserves (£42,000) and resulted in a balance sheet deficit of £1,099 in 2013. The accounts describe the purpose of unrestricted reserves to mitigate against potential income fluctuation and as being set with the potential wind-down costs of the charity in mind, should it ever be forced to consider closure.

² 'UK GIVING 2012: an overview of charitable giving in the UK 2011/12' published in November 2012 by NCVO and CAF.

Charities should ensure regular reporting of financial matters to trustees, including details of the charity's financial position and performance. The financial information sent to trustees typically should include the latest management accounts, a comparison of budget to actual figures, an explanation for variances between forecasts and what actually happened and details of cash flow and closing bank balances.

The inquiry examined the financial and other records of the charity. The inquiry found that there were no formal procedures by which the CEO provided the trustees with management information about the charity or its financial position. The inquiry was not satisfied that the trustees were sufficiently informed about the charity's financial situation and performance by the CEO, demonstrating a lack of sufficient oversight by the trustees over the charity's finances.

The commission's core guidance makes clear that trustees of charities of all sizes need access to accurate and up-to-date financial information to enable them to make proper decisions and trustees' meetings should be used to communicate information concerning the finances and financial management of a charity. It also stresses the need for trustees to ensure that delegated authority is being properly exercised, through appropriate monitoring and reporting procedures.

The inquiry established that the CEO's role, performance and remuneration was not subject to regular review, and had not been reviewed for several years, by the trustees. It was therefore difficult for the trustees to demonstrate to the inquiry's satisfaction that the costs associated with this position were in the best interests of the charity or were an effective use of the charity's resources. The inquiry found that the CEO was not subject to adequate supervision, or monitoring and reporting controls by the trustees and the trustees control and oversight of the financial management of the charity was lacking.

The agreement with the fundraising agency in particular:

- **the reasonableness of the former trustees' decision to enter into the agreement and its impact on the charity**
- **the current trustees' oversight and management of financial performance of fundraising activities operated under the agreement**
- **the transparency and reporting of financial performance under the agreement in the charity's annual reports and accounts**

The reasonableness of the former trustees' decision to enter into the agreement and its impact on the charity

The fundraising agreement was entered into on 1 March 2012. The inquiry was informed by the trustees that the charity felt compelled to enter into the agreement with the fundraising agency because of the deteriorating financial circumstances of the charity. The fundraising agency had been recommended to the charity by an adviser. From the information examined, the inquiry found no evidence which showed a connection between the former trustees and the fundraising agency.

Trustees are required to ensure that they are adequately informed prior to taking a decision. When making decisions, to discharge their legal duties as trustees, they must:

- act within their powers
- act only in the interests of the charity
- make sure they are sufficiently informed
- take account of all relevant factors
- ignore any irrelevant factors
- manage conflicts of interest
- make decisions that are within the range of decisions that a reasonable trustee body could make

They must be able to show how they have followed these principles.

The inquiry found that the charity was unable to provide evidence that the former trustees considered the range of reasonable alternatives available at the time or that they gave adequate consideration to the risks, issues and potential liabilities arising from the terms of the agreement. The inquiry established that some professional advice was sought prior to entering into the agreement. However, the commission is not satisfied that adequate due diligence was undertaken or that adequate independent professional advice was obtained by the former trustees prior to entering into the agreement in 2012. The inquiry has not been presented with any evidence which detailed advice received by the former trustees on the potential risks associated with entering into the agreement or on the prudence of the substance of the agreement, such as in respect to the level of costs and income ratios.

The inquiry's view is that there were unfavourable terms to the charity in the agreement, particularly in the termination provisions, which disadvantaged it and were not in its best interests. Those provisions essentially gave the charity no practical means by which to terminate the agreement, which given it was for a duration of 7 years and it was intended to generate the principal source of income for the charity, was of particular concern. The inquiry found that the control and administration of the fundraising arrangement lies principally with the fundraising agency, rather than the charity. In the inquiry's view the terms of the agreement substantially favoured the fundraising agency and it is difficult to determine that entering into the agreement was in the charity's best interests.

The inquiry found that the high level of costs and fees associated with the agreement resulted and is likely to continue to result in a very low proportion of publicly donated funds being passed to the charity to further its objects. The agreement was constructed in such a way as to require all costs and fees to be paid before any funds are released to the charity. Under the original terms of the agreement, this would have resulted in the charity not receiving any proceeds from the fundraising until year 7 of the agreement.

The inquiry established that financial forecasts produced by the fundraising agency prior to the charity entering into the agreement, projected that the fundraising activities under the agreement would only reach a cumulative surplus in year 7. Any annual surpluses generated prior to this point were required to offset the deficits incurred in the first 3 years of the agreement. These financial projections forecast that over the life of the 7 year agreement term, approximately £5.4 million in donations would be generated from the public but would produce a surplus of just £92,000 - representing only 1.7% of gross proceeds donated by public. The remainder of the funds would be consumed in costs and fees.

The inquiry established that since the charity was not receiving any immediate income from the agreement, the current trustees obtained loans from the fundraising agency totalling £56,500 to bolster the charity's income during the first 2 years of the agreement and to support its grant making activities. The trustees believed that they were effectively obtaining advances on the proceeds the charity hoped to receive towards the end of the 7 year agreement. However, the inquiry found that the charity's CEO had signed written loan agreements, the terms of which committed the charity to repay the funds on demand. The inquiry found no information in the charity's meeting minutes regarding the decisions to enter into such loans or advances, whether the trustees were adequately informed of these loans or how such decisions were in the best interests of the charity. Although the inquiry did identify that the trustees took steps to negotiate better terms (that no interest be charged) for the charity for loans entered into during the financial year ending 31 March 2015.

The inquiry established that the charity already had a balance sheet³ deficit of £1,099 on 31 March 2013 (the first year of the agreement) prior to receiving the loans. As a result of receiving the loans and the failures to adequately limit expenditure the charity's balance sheet deficit deteriorated further to £71,454 by 31 March 2015. Although, based on the information it saw, the motives of the current trustees appeared to the inquiry to be well intentioned, it was unclear how entering into the loans was in the best interests of the charity, given its fragile solvency position and the significantly adverse financial performance of fundraising activities under the agreement.

The inquiry formed the view, based on the evidence gathered, that the terms of the original agreement and the terms on which the loans/advances had been made to the charity raised serious and continuing risks to the charity's viability and public trust and confidence in the charity.

The current trustees' oversight and management of financial performance of fundraising activities operated under the agreement

Trustees are expected to exercise proper oversight and management of fundraising activities and their financial performance to ensure that they are in the best interests of the charity and so they can properly manage the associated risks which may arise from them.

The commission's fundraising **guidance** makes clear that before decisions are made about whether an agreement with a commercial partner is in a charity's best interests trustees should have effective systems in place to ensure that the partner is a suitable and appropriate to work with, the arrangement is consistent with the charity's fundraising strategy and values, the costs are justifiable in the best interests of the charity, the terms of the arrangement ensures that your charity has proper control of funds and will protect the charity against undue risk, including to its reputation, finances, data and name, the agreement is monitored and there are appropriate review arrangements to ensure it remains in the best interests of the charity throughout its duration.

Information obtained by the inquiry established that the financial performance of fundraising activities operated during the first 3 years of agreement was significantly worse than the original financial projections provided by the fundraising agency at the outset.

³ A charity's balance sheet is one of the means used to assess a charity's solvency and viability.

A financial report and revised forecast provided to the inquiry contained the actual performance figures up to the end of the third year of the agreement (to 31 March 2015). This showed the cumulative actual financial deficit (gross public donations and other income minus costs and fees) after 3 years of fundraising activity was substantial - £631,128. The actual financial deficit was almost double the original deficit projected by the fundraising agency at that stage in the life-cycle of the agreement. Notwithstanding this adverse financial performance the fundraising agency still projected a surplus at the end of the 7 year term. However, based on its own analysis, the inquiry considered that the fundraising agency's revised forecast was unrealistic without major corrective action and that there was a very real possibility that a deficit would remain even after 7 years - which would result in no proceeds being passed to the charity in spite of around £5 million being potentially solicited from the public on behalf of the charity.

The inquiry found that the substantial deficit from the first 3 years of fundraising activity under the agreement, which was almost double that originally envisaged, was a major threat to the charity's viability and the forecast income stream from the charity at the end of the agreement. It also found that adequate steps were not being taken by the current trustees and the charity to address that threat.

The transparency and reporting of financial performance under the agreement in the charity's annual reports and accounts

The inquiry identified that the charity, either through its website, its literature or in the charity's annual reports and accounts, did not provide sufficient or clear information about the agreement or the performance of it in order to allow the public to make an informed decision when deciding whether to donate to the charity.

The inquiry found that the charity's accounts have not adequately conveyed to potential donors the extent to which their donated funds may be applied directly for charitable purposes. In the inquiry's view the accounts would benefit from additional information to enable readers to have a better appreciation of the terms and financial performance of the agreement.

The inquiry also found, in its scrutiny and review of the charity's annual accounts, that the charity's accounts for the financial year ending 2015 were not fully compliant with the Statement of Recommended Practice (SORP).

Summary of findings in respect of the original decision, management of financial performance and transparency of reporting

The inquiry found, based on the evidence gathered, that the terms of the agreement; the actual financial performance of fundraising activities conducted under the agreement; and the terms on which advances/loans had been made to the charity posed serious threats to the charity's viability and public trust and confidence in the charity. It was difficult to see how it was overall a good deal and was in the best interests of the charity.

The inquiry was not satisfied, based on the evidence gathered and presented to it by the charity, that the trustees were managing the situation and taking adequate steps to address the serious threats to the charity's viability and public trust and confidence in the charity.

The inquiry was not satisfied that adequate steps were being taken to transparently report on the agreement and the financial performance of fundraising activities conducted under the agreement in the charity's annual report and accounts.

The extent of transparency in the fundraising activities conducted on the charity's behalf about its agreement with the fundraising agency and the potential impact of this on public trust and confidence in the charity

There are specific rules that have to be followed if a charity uses a 'professional fundraiser'.

The Charities Act 1992 ('the 1992 act') and associated statutory regulations require professional fundraisers, and others, to follow certain rules when fundraising for a charity or charitable purposes. This includes making a detailed declaration, known as a solicitation statement, to the public when soliciting or procuring funds on behalf of the charity from them. The regulations seek to enable donors to make an informed decision, knowing how much of their donation will reach the charity and the proportion that will be received by the professional fundraiser.

The inquiry established that neither the trustees nor the fundraising agency considered that the fundraising agency was acting as a 'professional fundraiser' pursuant to the definition in the 1992 act⁴ under the terms of the agreement.

The agency carries out an extensive range of functions that solicit or procure donations from the public on behalf of the charity. These functions include developing the strategy for the charity's direct mail campaigns, drafting the letters and artwork to be used in those campaigns; populating mailing lists; selecting, briefing and managing the 'data processing' and 'handling' contractors; ordering stationery; managing the 'mail house' and preparing reports on the results of the agreement.

The charity said that it was aware that the fundraising agreement had been reviewed by 2 law firms, one on compliance aspects, one for commercial aspects.

The inquiry established that the fundraising material issued to the public by the fundraising agency on the charity's behalf contained no solicitation statement or explanation about its arrangements with third parties or the proportion of funds that the charity expected to receive. The trustees told the inquiry that they did not consider it necessary to include a solicitation statement because they considered the arrangements fell outside of the statutory regulations.

Having considered the agreement and evidence about the arrangements in place, the inquiry takes the view that the fundraising agency is acting as a professional fundraiser on behalf of the charity and that there was therefore a breach of the requirement contained in section 60(1) of the Charities Act 1992 to provide a solicitation statement in fundraising materials sent to potential donors.

Even in arrangements in which a third party does not consider itself a professional fundraiser, a charity's reputation may be subject to unacceptable risk and damage if donors are not given a fair indication of the arrangement or the costs involved. Charities are expected to be transparent with their donors in their fundraising activities, particularly where someone is not employed directly by, but there are fees or commission being taken by them from the public, from the money collected or raised.

The inquiry found that the fundraising material issued under the agreement on the charity's behalf lacked sufficient transparency to allow the public to make an informed decision when considering whether to donate to the charity and was misleading to the public since it implied that all donations would go to the charity. The trustees knew this was not the case but did not take the initiative in addressing this issue.

⁴ As defined in section 58(1) of the Charities Act 1992 in England and Wales, a 'professional fundraiser' is: (a) any person (apart from the charitable institution or a company connected with such an institution) who carries on a fundraising business, or (b) any other person (apart from a person excluded by virtue of subsections (2) or (3)) who for reward solicits money or other property for the benefit of a charitable institution, if he does so otherwise than in the course of any fund-raising venture undertaken by a person falling within paragraph (a) above.

The inquiry was all the more concerned about this, given the significant fees and commissions taken by the fundraising agency under the agreement, and how little the charity actually received and was likely to receive under the fundraising arrangement. It is the inquiry's view that the donors who gave money through fundraising activities conducted under the agreement would not expect, or be aware, that such a small percentage donated was actually destined to reach the charity.

The inquiry considered that the former and current trustees were therefore exposing the reputation of the charity to undue risk by not ensuring that fundraising materials issued on behalf of the charity which solicit funds from the public were sufficiently transparent and donors who gave were given sufficient information about how much of what they were donating actually came to the charity.

Whether or not the trustees were complying with and fulfilling their legal duties and responsibilities as trustees under charity law

The inquiry reviewed the charity's records and accounts and established that the charity's record keeping was inadequate, particularly in respect of decisions made by the trustees in the management of the charity. The charity did not keep adequate records of all trustee decisions and without such records, the trustees cannot demonstrate that decisions were properly taken, reasonable or in the best interests of the charity.

For the reasons set out in the previous sections the inquiry does not consider that the former trustees adequately discharged their legal duties and responsibilities as trustees when deciding to enter into the 7 year agreement with the fundraising agency. It is difficult to see how entering into the agreement on the terms they did was a good deal for the charity and in its best interests and that they ensured they took account of all relevant factors and made a decision that was within the range of decisions that a reasonable trustee body could make in the circumstances. In its response to the inquiry's findings, the charity maintains that the agreement 'offered the charity the prospect of reaching very positive returns after year 7'.

The inquiry also found that the trustees did not comply with their legal duties and ensure that the charity or persons working on its behalf transparently engaged with the public when soliciting funds through fundraising activities conducted under the agreement. It was difficult to see how the costs were justifiable in the best interests of the charity and there was little evidence of them protecting the charity, its finance, name and reputation against undue risk.

The inquiry identified high levels of internal operating and fundraising costs which were disproportionate, compared to the levels of direct charitable expenditure by the charity. The low level of charitable expenditure, which has been consistent throughout the charity's financial history, raised significant public trust and confidence issues. The commission has not been satisfied that the trustees took reasonable steps to address these issues.

The inquiry's analysis of the charity's accounts showed that it had a deteriorating balance sheet deficit. The current trustees could not adequately demonstrate that they had taken sufficient steps to manage this issue and ensure that the deficit did not continue to worsen.

The inquiry also established that the charity did not have any risk management procedures. The trustees were therefore unable to demonstrate how they reviewed and managed risks to the charity, in particular those arising from the charity's financial position and the agreement. In the absence of such procedures, the trustees were unable to demonstrate that they were discharging their legal duties, including the duty to exercise reasonable care and skill in the administration of the charity.

Regulatory actions taken by the commission and actions taken by the charity

To address the serious issues identified through the inquiry's work the commission directed, on 11 May and 4 July 2016 respectively, the charity trustees to action using its powers under section 84 of the act. These took the form of 2 action plans:

- 1) The 'governance and management' action plan.
- 2) The 'fundraising' action plan.

The 'governance and management' action plan

The governance and management action plan directs the trustees to undertake a number of actions in respect of the general management and administration of the charity including:

- undertaking a review of the charity's expenditure and overheads and identifying any areas in which costs can be saved, reduced or are no longer necessary in respect of the operation of the charity
- delivering a tangible improvement in the percentage of the charity's income that is applied directly for charitable purposes
- reviewing the composition of its board of trustees and identifying any required changes or additions which will establish an adequately sized board of trustees with an appropriate mix of skills, knowledge and experience that enables the trustees to manage and administer the charity efficiently and effectively
- undertaking a full review of the role of the CEO which will include updating the description and duties of the role; the decision making and delegation protocols of the role; the setting of targeted and achievable objectives and implementation of a structured review/appraisal process
- reviewing and updating the charity's governance controls, reporting arrangements to the trustees, record keeping and recording processes - particularly regarding the recording of decisions by the trustees

The charity's progress to date against the 'governance and management' action plan

Since the governance and management action plan was issued the trustees have taken a number of steps to comply with the actions required. Firstly, the trustees have reviewed the charity's financial situation and, as a result, entered into a negotiations with the agency in order to reduce on-going costs associated with the arrangement. The trustees have agreed savings amounting to £20,833 annually in costs and a release of funds to the charity by the agency of approximately £40k in order to increase the charity's direct charitable support in the current financial year.

The trustees took professional advice on the role of the charity's CEO and have now implemented a new contract of employment and job description. In addition, the trustees have undertaken a salary benchmarking assessment of the role to ensure the CEO's pay is reasonable and within industry standards.

The trustees have taken steps to improve the recording of the charity's decisions and implemented a new quarterly management accounts system so that the trustees will now be properly and fully informed about the charity's financial position and are able to make decisions in the best interests of the charity.

The trustees are actively seeking additional trustees in order to both increase the number of trustees and to appoint individuals with different skills, knowledge and experience to complement those of the existing trustees. The trustees have experienced difficulties in recruitment whilst the commission's inquiry has been ongoing, but hope to appoint individuals following the inquiry's closure. The commission will continue to monitor the trustee's progress on this and the other actions detailed.

The 'fundraising' action plan

The fundraising action plan directs the trustees to undertake a number of actions in respect of the agreement and practices related to the agreement including:

- ensuring a solicitation statement, which explains the proportion of funds the charity expects to receive and the arrangement with the fundraising agency, is included in any written fundraising material which is issued on the charity's behalf under the terms of the agreement
- reviewing the agreement and arrangements with the fundraising agency particularly in respect of risks to the charity's reputation and the charity's exposure to potential liabilities
- reviewing the impact of the agreement on the solvency and viability of the charity
- reviewing and updating the reporting, monitoring and verification procedures relating to the agreement
- improving the transparency and quality of disclosures in the charity's annual reports and accounts

The charity's progress to date against the 'fundraising' action plan

Since the fundraising action plan was issued the inquiry has approved the form and content of the solicitation statement and verified the financial figures referred to in the statement. The charity has confirmed that solicitation statements will be included in the next round of fundraising material to be issued to the public. In its response to the inquiry, the charity informed it that the agency denies that it is a professional fundraiser, as defined in the Charities Act 1992 but it has now 'begun including solicitation statements in mailing on behalf of the charity' although this is not an admission that it is covered by the definition in the 1992 act.

The charity has negotiated with the fundraising agency a £325,000 write-off of the deficit accumulated through fundraising activities conducted under the terms of the agreement. This includes the write off of the loans made by the fundraising agency to the charity which were recorded as a debt on the charity's balance sheet. The charity has also negotiated reductions in the costs that will be incurred for the remaining term of the agreement. The charity expects to receive approximately £120,000 over the next 3 years as a result. The outcome of these negotiations has also improved the financial viability of the charity.

The commission has also reported the findings about the fundraising agency to the fundraising regulator.

Conclusion

The commission concluded that:

- there was misconduct and mismanagement in the administration of the charity
- there was evidence of both poor governance and poor financial management of the charity and its affairs
- the former trustees entered into a fundraising activities which was not in the best interests of the charity and subjected it to high fundraising costs over a long period of time
- the public were misled into thinking more money than did would make its way to the charity and be used to make grants and support hospices because of the terms of the agreement and the lack of transparency about the costs and fees taken
- even the money that came to the charity was subject to high administration and governance costs such that in some years barely anything was available to support hospices and their work
- the trustees failed to manage the risks and failed to comply with their legal duties and responsibilities as trustees

The former trustees did not take adequate steps to address the reputational risks and issues arising from the consistently low proportion of funds applied directly for charitable purposes. It is the commission's view that the former trustees' failure to adequately address these reputational risks and issues was a significant contributory factor to the 46% reduction in donated income from the public in 2011-12, notwithstanding the difficult economic conditions at that time. Furthermore poor financial oversight and a failure to adequately control costs and overheads was, in the commission's view, an instrumental factor in the deteriorating financial position which led to the charity having a balance sheet deficit by 31 March 2013.

The former trustees who took the decision to enter into the 7 year agreement with the fundraising agency failed to negotiate terms which were in the charity's best interests and did not act with reasonable care or skill. The commission considers the decision to commit the charity on the terms agreed was not a responsible one. The commission has reached this view, in part, because the agreement:

- did not contain a provision which allowed the charity to terminate the arrangement as a result of sustained poor financial performance of fundraising activities conducted on the charity's behalf by the fundraising agency
- would have resulted in the charity not receiving any proceeds from the fundraising until year 7
- would also have potentially resulted in the charity receiving less than 2% of £5.4 million of income and donations from the public - the donating public would reasonably expect that a significantly higher proportion of donations would make its way to charity and be applied for charitable purposes - in any event, the charity should have been transparent about it and allowed the public to make an informed choice about whether to donate

The commission also concluded that donations were being solicited and/or procured by or on behalf of the charity in a manner which lacked transparency and was misleading to the public. This resulted in the charity's reputation, as well as that of the sector more generally, being further exposed to undue risk and harm.

The original terms of the agreement; the actual financial performance of fundraising activities conducted under the agreement; and the terms on which advances/loans had been made to the charity by the fundraising agency posed serious threats to the charity's viability and public trust and confidence in the charity. These issues compounded the fragile solvency position of the charity.

The commission recognises the difficult position that the current trustees faced when they assumed responsibility for a charity in a fragile financial position and which was already committed to the 7 year agreement with the fundraising agency and acknowledges that the trustees have relied on professional advice during the course of the inquiry and have co-operated fully with the inquiry team throughout. Nevertheless the commission concluded that adequate steps were not being taken to address the serious threats to the charity's viability and public trust and confidence in the charity. Whilst the Commission acknowledges that its inquiry has had a detrimental impact on the charity's ability to fundraise, it is satisfied that the inquiry has been conducted in accordance with the best regulatory practice principles and was necessary and proportionate given the Commission's regulatory concerns.

The current trustees have acted responsibly in starting to address the issues raised - notably in achieving a £325,000 write off by the agency of the arrangements accumulated costs deficit. As a result, the charity expects to receive £120,000 over the next 3 years which it would not otherwise have received without this write off. While these repayments are welcomed by the commission these proceeds are expected to represent only 14% of the gross donations by the public over that 3 year period. The Commission acknowledges that, dependent upon how well the agreement performs in its final 3 years, the charity could potentially receive better returns than the current projections.

The commission will be considering, in light of the findings and evidence, the fitness of the former trustees to be charity trustees.

Conduct of the inquiry

The inquiry completed the following work as part of its investigation:

- undertook a visit to the charity's accountants offices, also the registered office of the charity, in order to examine the charity's books and records and obtain further information about the charity's financial position and the financial aspects of the agreement
- interviewed the charity's trustees, its CEO, and the charity's professional adviser in April 2015 in order to obtain information about how the charity was being managed and operated, the charity's arrangements and processes in respect of the agency and their response to the commission's concerns
- obtained and analysed various documents and records from the charity in respect of the charity's general management and administration, the agreement and fundraising activities associated with the agreement
- issued 2 orders under section 84 of the act (in regulatory action section)
- obtained further information and documents from the charity to verify progress against the action plans

Issues for the wider sector

Trustees' decision making and record keeping

Charity trustees are responsible for governing the charity and making decisions about how it should be run. Making decisions is one of the most important parts of the trustees' role. Some decisions are simple and straightforward; others can be complex or far reaching in their consequences.

Trustees can be confident about decision making if they understand their role and responsibilities, know how to make decisions effectively, are ready to be accountable to people with an interest in their charity, and follow the 7 principles that the courts have developed for reviewing decisions made by trustees.

Trustees must:

- act within their powers
- act in good faith and only in the interests of the charity
- make sure they are sufficiently informed
- take account of all relevant factors
- ignore any irrelevant factors
- manage **conflicts of interest**
- make decisions that are within the range of decisions that a reasonable trustee body could make

It is important that charity trustees apply these 7 principles when making significant or strategic decisions, such as those affecting the charity's beneficiaries, assets or future direction. Trustees' must be able to show that they have followed these principles and keep adequate records to evidence that their decisions have been properly made, particularly for important or controversial decisions. The commission's guidance on trustee decision making can be accessed on [GOV.UK](#).

Fundraising practices and agreements

Trustees must comply with their legal duties when overseeing their charity's fundraising, as set out in the in the commission's guidance - **Charity fundraising: a guide to trustee duties (CC20)**.

Where a charity is working with a third party to raise funds, compliance with trustee duties means having effective systems in place to keep control of the fundraising, and taking steps to properly protect the charity's interests, assets and reputation. It also means compliance with relevant legal rules, including those designed to make third party fundraising arrangements transparent to donors, supporters and the public.

Professional fundraisers and commercial participators are responsible for ensuring that the specific legal rules that apply to them and the arrangements they make with charities are followed. However, the commission's view is that, to comply with their charity law duties, trustees must also ensure that their arrangements with these fundraisers are in line with these rules. Failure to do this will generally amount to misconduct and mismanagement of the charity's affairs.

The commission issued an **alert** to the charity sector on 8 November 2016 to remind trustees that they must comply with their legal trustee duties when overseeing their charity's fundraising and to warn trustees of the potential risks when entering into such arrangements. Where a charity is working with a third party to raise funds, compliance with trustee duties means having effective systems in place to keep control of the fundraising, and taking steps to properly protect the charity's interests, assets and reputation. It also means compliance with relevant legal rules, including those designed to make third party fundraising arrangements transparent to donors, supporters and the public.

Situations that are of particular concern and which should be avoided are those that include one or more of the following characteristics:

- arrangements with a third party fundraiser which bear all the hallmarks of a professional fundraiser arrangement, but which are structured to avoid the legal rules; the fundraiser may be described as an adviser or consultant in the contract even though in reality they are really controlling the solicitation of funds on the charity's behalf - these arrangements can also mean that it is not clear to the donor that the fundraising is being delivered by, or with the significant involvement of, a third party at a significant cost to the charity
- medium or long term contracts that have very limited termination or adjustment provisions
- arrangements in which the charity only benefits from the arrangement at the very end of the contract term, and where there is the possibility that the charity will not benefit at all
- arrangements where the fees received by, or payments made to third party fundraisers damage public trust and confidence in that charity

When working with third party fundraisers, trustees must:

- comply with specific legal requirements which apply when the third party fundraiser meets the definition of a **professional fundraiser** or **commercial participator**; these rules promote transparency, protect potential donors, and give them a fair indication of the extent to which the charity (or charities) will benefit from the fundraising
- ensure that the arrangement is set up and controlled in a way which is in the best interests of the charity, and which protects its assets and reputation; the commission's guidance - **Charity fundraising: a guide to trustee duties (CC20)** sets out the issues which trustees should consider to make sure that the potential benefits of working with the other organisation are appropriately balanced with proper attention to protecting their charity's interests

Where a charity is entering fundraising arrangements with other third party fundraisers and these rules do not apply - for example, because the arrangement is between the third party fundraiser and a charity's subsidiary trading company or they have been appointed in a genuine advisory or consultancy capacity - the commission will expect the charity to operate with the same principles in mind. This will allow it to have more effective control of the fundraising, and provide transparency to its supporters, donors and the public about the fundraising arrangements and the associated costs. Otherwise, the charity's assets and reputation can be subject to unacceptable risk, amounting, at least to mismanagement of its affairs.

Other resources and help available to charities to ensure them lawfully and properly manage fundraising activities:

- information and advice is provided by the Fundraising Regulator on its website (www.fundraisingregulator.org.uk), including information about the new requirements for contracts between charities and third party fundraising organisations which came into force on 1 November 2016
- the **Institute of Fundraising** also has advice and information on its website, including a **guide on working with fundraising agencies**