



## Operational Case Report

# Fairfield (Croydon) Limited (1026483)

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### About the charity

The charity's objects are to provide recreation and leisure facilities for the benefit of the inhabitants of the Borough of Croydon and surrounding boroughs. In practice, it maintains and manages an entertainment venue - Fairfield Halls - which hosts music, theatre, film and dance productions. The property is owned by the local authority but leased to the charity; in practice, the rent is covered by a grant from the local authority to the charity.

### Why the commission got involved

We became concerned about reports in local news blogs which suggested that Croydon Council had asked the charity's trustees to consider giving the Council greater control within the charity. The proposals were to admit the Council as a member and give it 75% voting rights at member meetings, thereby effectively turning the charity into local authority controlled company. A local resident also raised concerns with us about these proposals.

Many local authorities are involved in charities as sole corporate trustees. This is not a concern, because trustees have a clear legal duty to make decisions in the charity's best interest. However, members of charities have no such obligations; they can act in their own interests, rather than the interest of the charity. The proposal was therefore of regulatory concern to us, because it would have effectively meant the take-over of the charity by the local authority in a way that allows the authority to influence decisions made by the charity in its own, rather than the charity's interests. This raised questions as to the future charitable status of the organisation.

### The action we took

We wrote to the charity, asking the trustees to confirm whether the proposal had been adopted and if so, whether the charity's Memorandum and Articles of Association had changed, what level of control the Council would have over the charity, whether the trustees had taken any legal advice, especially any specialist charity law advice.

## What we found

The charity confirmed that the proposal had not yet been adopted and that therefore no changes had occurred at the charity; the trustees also confirmed that they had sought specialist legal advice. However, they also confirmed that they had agreed to fully consider the Council's proposal, explaining that it was linked to Croydon Council's plans to invest significant funds in refurbishing Fairfield Halls; the Council was keen to ensure their funding was being used to best effect. This raised further questions for us. We needed to understand why the issue around the control of grant funds was being dealt with by the council effectively taking control of the charity, rather than through the terms of the grant agreement. We also needed to understand how the trustees satisfied themselves that the Council's majority membership would not prevent them from complying with their statutory duties.

We asked to see any relevant legal advice, as well as copies of the minutes of trustee meetings at which these issues were discussed, in order to properly understand how trustees had decided to enter into negotiations with the Council about the proposals.

## Impact of our involvement

The charity eventually confirmed with us that the Council had decided to withdraw the membership proposals. The trustees confirmed that the relationship between the charity and the local authority would be dealt with by lease and grant agreements. We advised the trustees that surrendering the lease agreement - even if it is replaced by another - would equate to a disposal of charity land and it would be likely we would need to grant the trustees authority to agree to such a proposal.

## Lessons for other charities

Charities are run by their trustees for the benefit of the charity's beneficiaries. An organisation cannot be a charity if it is run in the interests of anyone beyond the charity, including private individuals and public bodies such as local authorities.

This case demonstrates that trustees must be mindful of charity law, including by seeking specialist advice where necessary, when negotiating relationships with third parties. Being aware of charity law requirements helps charities during negotiations with other organisations and prevents trustees from signing up to an agreement which they may not have the authority to commit to.

The case also demonstrates that the commission's proactive involvement can often help prevent mismanagement or abuses of charitable status before they occur.