



Regulatory Case Report

The Roddick Foundation

Registered Charity Number 1061372



1. This is a regulatory case report (the 'report') of the Charity Commission (the 'commission')'s engagement with The Roddick Foundation (the 'charity').

About the charity

2. The charity was registered with the commission on 18 March 1997. It is governed by a memorandum and articles of association and was incorporated on 21 January 1997.
3. The charity's objects are 'the promotion of any charitable purpose for the benefit of the community, including relief of poverty, advancement of education and social welfare'. The charity's website describes the charity as 'a family-run, independent and progressive organisation dedicated to the support of visionary organisations and individuals who show leadership and results in making this a more just and kind world. We make grants to those engaged in results-oriented work in the areas of social, labour and environmental justice, and human rights'.
4. For the financial year ended 31 March 2015, the charity reported an income of £487,044 and expenditure of over £1.5 million.

Issues under consideration

5. The commission opened a case into a separate charity, The Joseph Rowntree Charitable Trust ('JRCT'), in September 2013, following a complaint being received that JRCT was funding an organisation called Cage Prisoners, now known as Cage ('Cage'). In the course of its enquiries into JRCT, the commission established that the charity had also funded Cage. This was confirmed in the charity's annual accounts for the financial years ended 31 March 2010, 2011, 2012 and 2013¹.
6. No complaint was made about the charity to the commission.
7. The commission opened a case into the charity in March 2014. The focus of the case, and the regulatory issues, were to establish whether the grants made by the charity to Cage were in furtherance of the charity's purposes and to ensure that the trustees had complied with their duties under charity law.
8. Cage is not a charity. It is a company. It has objects 'to promote human rights throughout the world' and 'other benevolent and philanthropic purposes which [its] directors from time to time think fit' which are not exclusively charitable. The remit and profile of Cage has changed over the years. It has described itself as a 'human rights organisation which exists to raise awareness of the plight of prisoners at Guantanamo Bay and other detainees' and on its website as 'an independent advocacy organisation working to empower communities impacted by the War on Terror. The organisation highlights and campaigns against state policies, striving for a world free from oppression and injustice ... and has been campaigning against the War on Terror for more than a decade'².
9. Funding other charities or non-charitable organisations can be an effective way to further a charity's purposes. But charities must only fund activities that further their charitable purposes and trustees must ensure they take steps to protect their charity's assets and reputation.

¹ The charity confirmed that, after this point, the grants had ceased.

² For more information about Cage please see www.cageuk.org.

10. The commission therefore examined the following:
- The nature of the charity's funding relationship with Cage.
 - Whether the charity's funding of Cage's activities was within and in furtherance of the purposes of the charity.
 - Whether the trustees had complied with their legal duties and responsibilities as trustees; in particular, when awarding funding to applicants (and especially applicants which are not charities) whether (i) the due diligence carried out by the trustees on the applicants and (ii) the monitoring of the end use of funds by the applicants, was sufficient.

Conduct of the case

11. The commission:
- Wrote to the trustees in March 2014 inviting their response to the concerns identified.
 - Scrutinised the charity's relationship with Cage, and asked the charity to explain the decision-making processes followed by its trustees when agreeing to fund Cage.
 - Examined the charity's grant-making policies more generally. The commission looked at how the charity carried out due diligence on funding projects, how it monitored compliance with the terms of the funding it awarded, and how the trustees assured themselves that charitable funds awarded to non-charitable organisations had been properly spent in furtherance of the charity's charitable purposes.
 - Met the trustees at the commission's offices in July 2014.
 - Examined documentation relating to the charity's grant funding to Cage, including the grant applications made by Cage, minutes of trustee meetings at which decisions to fund Cage were made, monitoring and evaluation forms from Cage, and an external financial review commissioned by the charity and carried out by a firm of specialist charity accountants in respect of the funds awarded to Cage (the 'review').
 - Reviewed the reporting requirements specified in the grant conditions.
12. In the charity's response in April 2014, the trustees indicated their willingness to cooperate fully with the commission's enquiries; they were of the view that there had not been any wrongdoing but were willing to take on board any feedback or advice.
13. In April 2014, the charity appointed legal advisers to advise in relation to the commission's engagement with the charity. Further information was provided to the commission about the charity's grant-making processes and the intended destination of the funding to Cage.
14. The commission wrote to the trustees with its findings in December 2014 and they responded in March 2015. The findings and conclusions of the commission at the end of its formal regulatory engagement with the charity are summarised below.

Findings on the issues

The charity's funding of Cage

15. The commission established that the charity had provided funding to Cage over a 4 year period, as follows:

Date	Amount of grant agreed
July 2009	£25,000
December 2010	£25,000
December 2011	£35,000
December 2012	£35,000
Total	£120,000

16. The charity confirmed that it made the awards detailed in the table to Cage between 2009 and 2012.
17. The 2009 grant was described by Cage as being 'for 2 full-time employees and office rental space' and the 2010 grant was described by Cage as having 'helped towards our core costs'.
18. The December 2011 grant was described by Cage as being used 'to cover [the] salary for [its then director] Moazzam Begg [('Mr Begg')] and his travel expenditure'. The December 2012 grant was explained by Cage to have been used for Cage's core costs. This included some advocacy work. The funding also appeared to have been spent on other staff costs as there were references in the paperwork to interns, some of whom worked on cases, and to funding for Cage's outreach director (10% of his salary).
19. The trustees commissioned the review to examine the funds awarded to Cage 'over the ... period [covering] the £35,000 grant in December 2011 ... [and the] £35,000 in December 2012'.
20. The review sets out that 'Cage's ... application ... for the 2011 grant states that the grant will be used for the salary costs of Mr Begg in order to assist him to carry out his advocacy work here in the UK and abroad. This would include his salary, employer's tax liability, cost of a part-time administration assistant to help with his diary, and costs towards international travel'. The review noted that 'in the period December 2011 to November 2012, salary payments and national insurance contributions to Mr Begg ... amounted to £27,598' and that 'Cage representatives have provided us with assurances that, in addition to the direct costs of Mr Begg's employment, other eligible costs include a share of the then managing director's salary ... £5,612 administration support and £2,585 of travel costs for Mr Begg. This makes the total eligible costs of £35,795'. However, the review noted that 'we cannot independently verify the travel expenses as Cage has not been able to provide us with supporting documentation'.
21. In respect of the period covering the December 2012 grant, the review noted that 'there was sufficient staff cost ... not otherwise specifically covered by other donors to account for the £35,000 grant'.
22. The trustees confirmed, in April 2014, shortly after the commission opened its case into the charity that 'funding for Cage ... has ceased and there are currently no plans to fund Cage ... in the future'.

Whether the funding of Cage's activities by the charity was within and consistent with the charity's own objects and in furtherance of its charitable purposes

23. The charity's view was that the funding to Cage was consistent with the charity's objects, because its objects were wide and namely because it was in furtherance of the charitable purpose of the advancement of human rights, and in support of building racial and religious harmony, as set out in the Charities Act 2011.
24. In addition, the charity's trustees, supported by their legal advisers, were of the view that all of Cage's activities were capable of furthering the charity's charitable purposes. In a letter to the commission dated 5 March 2015 they said:

'The trustees' view is that whilst Cage is not a registered charity, the grants made by the charity between 2009 and 2012 were intended for recognised charitable purposes' and

'... the trustees believe that all of the funds given by the charity were in fact used for charitable purposes.'
25. Under charity law, whilst the charitable purpose of advancing human rights can be supported in a number of ways, not all activities to support or promote human rights activities will be capable of furthering a charitable purpose. Some human rights organisations choose not to be charitable because of the restrictions charity law requirements would impose on them.
26. The commission noted that the review relied on what Cage had reported to the charity about activities which Cage had undertaken with the 2011 and 2012 grants and which, in Cage's opinion, furthered the charitable purposes. In the commission's view, it was not evident that the review had assessed whether the activities undertaken by Cage (campaigns, lobbying and individual casework) were confined to advancing human rights as understood under charity law, and which the charity would therefore have been able to support and fund.
27. Having examined the grant and monitoring paperwork provided by the charity, as well as information on Cage's website about the nature of its work, the commission could not agree with the charity's assessment that all activities that were funded were charitable. The commission's view was that some, but not all, of Cage's activities might further a charitable purpose. Cage's work on counter terrorism issues, for example, did not appear to be limited to or entirely related to human rights issues. Moreover, in light of what the grant agreement allowed the funding to be spent on, there was nothing to constrain Cage, given that it is not a charity, from using the grant funds to carry out activities that did not further a charitable purpose.
28. The commission believes the trustees were acting in good faith and that it was the charity's intention exclusively to fund programmes capable of furthering charitable purposes. However, this can only be the case if all activities funded are capable of furthering charitable purposes. The commission was not convinced that the trustees and Cage had understood what activities might and might not be capable of furthering those charitable purposes; however, the trustees responded positively at the July 2014 meeting to the commission's concerns and understood the issue at hand.
29. The commission's view was that a proportionate regulatory response was to ensure that, in future, grants were awarded for, and through effective monitoring, demonstrated to have been used for, exclusively charitable purposes.

Whether the trustees had complied with their legal duties and responsibilities as trustees

Funding of 'core costs'

30. Funding of a non-charity's general running costs (or 'core' costs), such as administration or staffing costs which are not directly connected to the activities that the charity is funding presents potential difficulty. First, this funding could be used to support activities and outcomes that are outside the charity's objects or that may not be charitable in law. Secondly, this funding could confer a private (ie non-charitable) benefit on the non-charity, its staff or board members.
31. In this case, from the paperwork examined, it was clear that the 2011 grant funding was for the 'salary and related costs for Mr Begg so that he may carry out his advocacy work in the UK and abroad'. It was not clear to the commission that amounts paid to Mr Begg as a salary were expended on matters which were for exclusively charitable purposes, in particular the advancement of human rights and promoting racial and religious harmony.
32. The review covering the 2011 and 2012 grants referred to 'Mr Begg's salary costs' and payments 'towards Cage's core costs', respectively, without specifying that such salary costs could only be paid to the extent they were incurred on matters which were in pursuance of the charitable purpose of the advancement of human rights. According to Cage's accounts, Mr Begg was a director of Cage at the time of the 2011 grant and an employee at the time of the 2012 grant and appeared to the commission to have a wider role in Cage than carrying out activities for the purpose of the advancement of human rights and interfaith work. The charity's trustees took the view that 'the entirety of his work supported the advancement of human rights and other charitable purposes' but the commission was not provided with sufficient detail to satisfy itself of this.
33. The trustees were of the view that they could fund general core costs of a non-charitable organisation. The monitoring forms completed by Cage made direct reference to funding core costs: 'The core costs given to us by [the charity] allow the organisation [Cage] the breathing space to function year to year. Knowing that such a generous grant permits us [Cage] to employ key members of staff, allows us to set plans and strategies for the following year and permit us the resources to execute them. The sheer volume of projects we have been involved in over the previous year would not have been possible without the assistance of the [charity's] grant'. A second monitoring form said that, 'the grant given by [the charity] helped towards our core costs, but in particular to assist in structuring the organisation better'. There were also other references in the grants' and monitoring paperwork to paying for other staffing costs in relation to casework; again, given that the casework may or may not have been confined to the charitable purpose of advancing human rights, it was not clear that all of the funds were restricted for use for exclusively charitable purposes.
34. The commission decided that it was not proportionate to pursue these historical payments made to Cage for the following reasons: the length of time which had elapsed since the charity made the grants which included staffing and general costs; the provision of some evidence that some of Cage's activities might further charitable purposes; the fact that the charity had taken legal advice; the understanding that no further funding was intended. However, the commission made clear to the trustees that they could not continue to fund the core organisational and staffing costs of Cage.

Grant making and due diligence

35. The trustees explained that the charity only responded to applications from referrals made by people or organisations known to the trustees. Those applications were examined on the basis of 'many years' experience which the trustees have gained in this area'.

36. The trustees said that when deciding whether to fund an organisation, they 'undertake a balancing exercise to ensure ... they weigh up the disadvantages and benefits of ... funding' the applicant and the need to have complied with the following legal duties and to have:
- 'properly assessed and managed the potential harm to public confidence on the charity and the sector generally;
 - complied with their legal duties to act in the best interests of the charity;
 - complied with their duty not to expose the charity to undue risk;
 - balanced the benefit to the organisation against whether the funding has any potential risk to the charity and alienating its supporters or reputation'.
37. In deciding to provide funding to Cage, the trustees explained that they took the following considerations into account:
- The positive references about Cage from other respected organisations operating in the field of human rights
 - Research conducted by the trustees themselves through publicly available material about Cage
 - That they had attended events organised by Cage
 - Undertakings by Cage that they have never been engaged in violence or acts of terror
 - Regular dialogue over the years between the charity and Cage.
38. The trustees also explained that this due diligence was intended to enable the trustees to have an in-depth and ongoing understanding of the work of Cage and its values both in advance of and during the funding of the organisation.
39. At a meeting between the commission and the charity in July 2014, the commission sought additional information from the trustees on the decision-making processes of the charity and how the trustees had risk-assessed the proposal to fund Cage.
40. It was explained that, whilst there were no formal policies, the trustees were experienced and educated on controversial issues. They were aware of potential risks with Cage as they are politically aware individuals. It was further explained that, regarding risk assessments, a number of steps had been undertaken by the charity which were effectively part of informal risk assessment processes. The processes included:
- A meeting with the potential recipient to help assess the initial risk
 - There is always a referral or a reference from a trusted source
 - There is always a discussion amongst the trustees to identify any concerns, where knowledge about the potential recipient and experience in the sector concerned are pooled and shared
 - There is always a written application
 - Following the application, the trustees ask further questions of the recipient.
41. In respect of Cage, the application form asked several detailed questions, including how long it had been established, how many staff it had, details of its current activities, and how it was funded, how they monitor and evaluate effectiveness, details of the projects they were requesting funding for, who they would benefit and timescales for delivery, how progress would be monitored by Cage, who was responsible for ensuring the money was spent properly and details of any rejected funding applications.

42. The charity explained that it did carry out some due diligence and assessment of the reputational risks associated with funding Cage. At the meeting with the commission in July 2014, the trustees explained that they were aware of allegations by critics of Cage that it had close links to terrorists and that the organisation had denied those allegations. It was explained that before the charity agreed to fund Cage, its chair of trustees met directly with Cage's then director to explore his views. Having done so, the chair was convinced that the then director had no interest or involvement in terrorism and believed that Cage was sincere about what it wanted to do. As a result, the charity was satisfied this was an entity it could support.
43. Where a charity funds controversial or unpopular causes or an organisation is engaged in high profile (and potentially controversial) activities, the trustees must fully consider the reputational and other risks to the charity and must conduct a commensurate level of due diligence and assurance.
44. The commission made clear that when funding high profile, unpopular or controversial causes or organisations the charity should regularly review its due diligence.

Monitoring and reporting

45. The trustees said that they went to considerable effort to monitor the use of funds awarded to Cage. The commission found that, following the payment of funds to Cage, the trustees sought - and received - monitoring and evaluation forms from it, which reported how Cage had spent the funds it had received from the charity. The commission scrutinised these and found that the paperwork was more thorough than that used by other grant making charities. The forms included details of achievements using the charity's funding such as events held, projects, reports published and media coverage (including lists of links to online public and media reports). It also asked for details of feedback from beneficiaries. Many of these aspects reflected good practice and the commission found that the charity's basic monitoring processes were sound.
46. However, the commission was not sufficiently assured that the significant difference between charitable and non-charitable human rights advocacy work and the boundaries between the two were fully understood by the charity's trustees when they awarded and monitored the use of funds, although the trustees took a different view stating that they 'have a deep and long experience of charitable human rights work'.
47. The commission took the view that there was more that the trustees might reasonably be expected to do to ensure that grant funding is only used for charitable purposes and to ensure that the trustees can demonstrate this is the case. This included: (i) being clearer about the parameters of each of the charitable purposes that were funded, taking into consideration the differences between the promotion of human rights as a charitable purpose and as a non-charitable political purpose, (ii) further consideration of how the charity can demonstrate that grant funding to non-charitable organisations is used only for charitable purposes, and (iii) ensuring that grant conditions mean that funding can be recovered, or withdrawn, if activities are undertaken which do not further a charitable purpose.
48. The commission was additionally of the view that the charity needed to strengthen parts of its processes so that it could reduce the future risk of its charitable funds being spent in furtherance of non-charitable purposes.

Regulatory advice given

49. The commission provided regulatory advice and guidance to the trustees on a number of matters including: the promotion of human rights as a charitable purpose, the importance of monitoring funding and activities, and the importance of conducting adequate and meaningful due diligence of grant recipients.
50. The trustees were advised to take the following steps to improve their internal procedures:
 - Strengthen the charity's grant application terms to cover the possibility - when giving to non-charitable entities - that funds may be spent in furtherance of non-charitable purposes. Terms should cover the issue of how the recipient should ensure charitable funds are applied only for charitable purposes, and not for the general/non-charitable purposes of the non-charity. They should also cover 'claw back' arrangements, where the charity can take steps to recover funds where evidence is not provided by the recipient that such funds have been spent exclusively on activities in furtherance of a charitable purpose.
 - Strengthen their monitoring processes to include adopting a dip-testing policy to monitor grants more effectively - particularly where funds have been provided to non-charitable entities - so they can have greater assurance that funds have been properly applied. This monitoring should be risk-based so that, where the risks are higher, more steps are taken to verify explanations and expenditure.
 - Consider drawing up a specific policy for funding recipients where the charitable purpose is linked to the advancement of human rights. This area can be more difficult than other types of funding and the commission's recommendation was that, if the charity plans regular funding of projects in this field, the charity would be best served by a statement of policy to provide clarity for the future.
51. The trustees have confirmed to the commission that they have implemented all of these improvements.

Steps taken by the charity

52. At the early stages of the case in April 2014, immediately after the commission's first enquiries were made, the trustees confirmed that they had already 'instructed legal advisers to review the charity's processes and paperwork procedures to ensure they are in line with good practice and of a high standard, with particular attention to any potential reputational risk to the foundation or the charitable sector' and to 'appoint independent auditors to review Cage's expenditure'.
53. The trustees accepted the regulatory advice and guidance provided by the commission. In particular, they accepted that:
 - The charity needed to take extra care when giving grants to recipients which are not registered charities and that grants connected to human rights purposes may require a particularly detailed focus in some situations.
 - The charity's due diligence process could be strengthened to consider specifically whether the potential grantee is a charity and if so whether it is registered with the commission or an equivalent regulator in other jurisdictions.

- More could be done to ensure that grant funding is only used for charitable purposes by addressing this specifically in the charity's revised grant-making policy, its guidance to trustees on grant-making, and its template grant conditions - the trustees also accepted the benefit of including more detail describing how the funds are to be used and ensuring the grant conditions specifically cover this.
- Legal advice would be taken where there is too much uncertainty for the trustees to be able to determine on their own whether a grant was exclusively in furtherance of charitable purposes.
- The high public profile of Cage would be taken seriously and they would take greater precautions if the charity had any further relationship with Cage, although they had no intention of doing so.

Conclusions

54. It was clear to the commission that the trustees took seriously the task of selecting the partners with whom they worked and to whom they gave grants. It was also clear that the charity had sound core grant-making and due diligence processes at the award stage. There was also evidence that a monitoring and evaluation process of what the charity's funds had been spent on was in place. There were many elements of good practice adopted by the charity.
55. The charity's grants to Cage were intended for activities that were capable of furthering the charity's charitable purposes but, in the absence of sufficient information regarding those activities, it is difficult to form a more definitive conclusion.
56. It is difficult to see how in these circumstances the trustees could have been sufficiently assured that the monies given to Cage were used for charitable purposes, particularly as Cage is not a charity and not all of its activities furthered charitable purposes.
57. Some improvements to the charity's processes and procedures were necessary to ensure robust scrutiny and control of funds when giving grants to non-charitable bodies and to demonstrate that the trustees discharge their legal duties and responsibilities, including appropriate due diligence and monitoring to ensure that grant funding is used only in furtherance of exclusively charitable purposes. The trustees have confirmed that all these improvements have been put in place.
58. The trustees engaged positively with the commission throughout and the charity showed a clear willingness to improve aspects of its processes.

Subsequent events

59. During the period between the commission confirming its findings to the trustees and the trustees responding to those findings, various public statements were made by Cage, including at a press conference on 26 February 2015, about Mohammed Emwazi. Those statements attracted public criticism and concern about the charity's funding of Cage.
60. The commission re-engaged with the charity on 2 March 2015 to seek urgent assurances:
 - As to the current position with regard to the charity's relationship with Cage and its activities, both financial and otherwise.
 - That no further payments had been made to Cage since December 2012 and that the current intention of the trustees was still not to make any further payments to Cage.

- If there were any future proposals, as to the basis of any new or contemplated links or funding programmes with Cage.
 - Whether the charity had already contacted Cage in light of the previous week's events to clarify whether any of its funds had been used by Cage to support Mohammed Emwazi and, if not, whether it would now do so.
61. The commission's view expressed to the charity was that, in light of the statements made by Cage and the public reaction to them, clear questions arose for a charity considering funding Cage's activities as to how the trustees could comply with their legal duties as charity trustees. The commission expressed the view that there would be significant reputational damage to any charity intending to fund Cage at that time and that it was difficult to see how trustees of a charity could justify taking such risks while complying with their legal duties of prudence and of protecting the charity's assets and reputation. The commission stated its view that a breach of such duties may well expose the trustees to personal liability.
 62. The commission stated that, as a result, it would 'have serious regulatory concerns now of any charity that expressed an intention to fund the work of Cage'. Given this, the commission asked the charity's trustees to confirm specifically that the charity had no plans to provide further funding for Cage and whether the previous commitment given by the trustees still applied. The commission stated that, if satisfactory assurances were not received, it would need to consider what further regulatory action it needed to take to ensure that public trust and confidence were not eroded by this issue.
 63. The charity provided all the assurances sought, without qualification, within 24 hours as requested. The charity restated that it had not funded Cage since December 2012, that it had no further payments pending and that it had no intention or proposal to fund Cage in the future. It said that, 'there has been no further contact with Cage as the charity is reeling from the shocking press conference [of 26 February 2015] and just formulating its response and reaction'. The trustees also provided a statement from Cage that confirmed that Cage had spent none of the charity's funds on casework to support Mohammed Emwazi.
 64. In June 2015, Cage issued judicial review proceedings challenging the commission's engagement with the charity. The commission informed the charity of the proceedings and provided the charity with a copy of its response, as a matter of courtesy. The charity was not a party to the proceedings and did not participate in them. The conclusion of the proceedings is described in our separate report regarding the JRCT case.

Impact of the commission's engagement

65. The commission's intervention has strengthened the charity's internal processes and procedures so that there can be greater public assurance that the charity is less at risk of applying charitable funds in furtherance of non-charitable purposes in the future, and that its trustees will fully comply with their legal duties and responsibilities.
66. It is clear to other charities and the public that the commission, as regulator, will probe robustly how charities spend charitable funds in order to ensure accountability and transparency and preserve public trust and confidence in charities.