



## Operational Case Report

# Tag Pet Rescue (1110837)

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### About the charity

The charity was registered in August 2005 to provide and maintain an animal shelter for the care and shelter of stray, neglected and unwanted animals and the protection of animals from ill-usage, cruelty and suffering.

### Why the commission got involved

In April 2014 we received a complaint alleging that unauthorised payments were being made to trustees of the charity.

The governing document of the charity prohibited trustees from receiving any remuneration from the charity but did give a power to employ one trustee.

It is a basic principle that trustees must not put themselves in a position where their personal interests conflict with their duty to act in the interests of the charity unless authorised to do so.

We needed to determine whether the charity was operating in line with its governing documents and to ensure that any conflicts of interests were being properly managed.

### The action we took

We scrutinised the accounts that the charity had submitted to us and wrote to the trustees, requesting information about payments to trustees, including how the decisions were made. We asked for copies of minutes relating to those decisions as well as a copy of the charity's conflict of interest policy.

### What we found

The accounts showed that two of the trustees had received payments totalling around £125,000 between 2005 and 2012. The charity confirmed that the two trustees were the founders of the charity and that they had also been paid as employees since 1999, an arrangement that was continued once the charity registered in 2006.

We concluded that these payments are unauthorised payments and we needed to consider whether:

- the payments were made in good faith in the interests of the charity, and the charity has benefitted from the payments
- the decision to make the payment was taken recklessly or the payment was made to benefit the trustee rather than the charity

Further correspondence with the charity revealed that the two trustees had set up and run the charity on a voluntary basis. However as the charity grew it began to require considerable time commitment, for which the founders were then paid. Once the charity was registered in 2006 the trustees made the decision to continue to pay two of the board as employees. We established that the two trustees receiving the payment were not involved in the decision and that the level of pay was set with consideration to the pay of comparable roles at other organisations.

We concluded that the unauthorised payments were made in good faith and that the charity has benefitted from the payments. This meant that we were not going to seek repayment.

However as the payments were unauthorised, the independent trustees also needed to formally consider whether it was in the interests of the charity to seek repayment. If they decided that the payments continued to be in the interests of the charity, an amendment would be needed to the governing document so that the trustees had the power to employ more than one trustee. In addition, the charity needed to put a conflict of interest policy in place. We therefore issued an action plan to the trustees on each of these three issues.

The action plan was issued in July and by the end of August the trustees had fully complied. They concluded that the payments to the trustees had benefitted the charity, amended the governing document to give the trustees the power to employ two of the board and had shared with us a copy of their conflict of interest policy.

## Lessons for others

It is a basic principle that trustees must not put themselves in a position where their personal interests conflict with their duty to act in the interests of the charity. Making payments to a trustee, without proper authority, is a breach of trust and could result in payments having to be repaid to the charity by the recipient trustee. This does not mean that this will necessarily be required. Where we are satisfied that the payments were made in good faith in the interests of the charity, and that the charity has benefitted from making the payments, then we will not normally expect the trustees to seek repayment of the unauthorised benefit. Our guidance [Trustee expenses and payments \(CC11\)](#) explains how and when a trustee can receive payment from a charity.

All trustees have a legal duty to only act in the best interests of their charity. We expect trustees to identify and address effectively any conflicts of interest that affect the trustees or their charity, taking the appropriate steps in line with our guidance: [Conflicts of interest: a guide for charity trustees \(CC29\)](#).