

Inquiry Report

Michael Davies Charitable Settlement

Registered Charity Number 1000574



A statement of the results of the class inquiry into double defaulter charities in particular the Michael Davies Charitable Settlement (registered charity number 1000574).

Published on 14 March 2014.

The Class Inquiry

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

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

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

The Charity

Michael Davies Charitable Settlement ("the Charity") was registered on 12 October 1990. It is a trust governed by a Trust Deed dated 11 September 1990.

The Charity's objects are:

"to pay apply appropriate or transfer the whole or any part thereof [of the capital and income of the Trust Fund] at such times and from time to time to such charity or charities and for such charitable purpose or purposes as they shall in their absolute discretion think fit"

More details about the Charity are available on the Register of Charities which can be accessed through the Charity Commission's website¹.

Issues under Investigation

The Charity failed to submit to the Commission the annual accounts, reports and annual returns required for the financial years ending 5 April 2010, 5 April 2011 and 5 April 2012. The Charity was sent various computer generated reminders from the Commission regarding the submission of their annual accounting documents.

¹ <http://www.charitycommission.gov.uk/find-charities/>

In addition, the Commission attempted to contact the charity by telephone and wrote to the Charity with a final warning on 18 October 2013 requesting that the missing documents be provided by 8 November 2013. The Commission warned what would happen if the Charity remained in default. The Charity has been in default of its obligations under the Act for a lengthy period of time, in respect of more than one set of documents and in spite of receiving numerous reminders.

The Charity met the criteria and became part of the Inquiry on 11 November 2013.

The Inquiry is confined to dealing with the trustees' mismanagement and misconduct² and remedying the non-compliance in connection with the annual accounting documents.

During the Inquiry the Charity filed the missing annual accounts, reports and annual returns for the financial years ending 5 April 2010, 5 April 2011 and 5 April 2012 on 26 November 2013.

On 14 February 2014 one of the trustees of the Charity informed the Commission "that despite your reminders to me and my parallel reminders and instructions for urgent action to my accountants appointed to deal with the accounts of the charity, they failed to provide the required material by the relevant deadline and as such, I am obliged as a trustee to accept that there has been misconduct"

"As a trustee of the charity I would like to stress that during the whole of the period in question, the intent and charitable distribution purposes of the Michael Davies Charitable Settlement have been fulfilled as intended and that a steady flow of charitable funds have been distributed to a wide range of needy bona fide charitable organisations."

"It is I who take final responsibility for the acts of the charities accountants and I apologise for my lack of rigour in chasing them even more vigorously and in ensuring that the accounts were in your hands by the appropriate date"

In addition, the accountancy firm acting on behalf of the trustees confirmed that "it was our own inaction which caused the late filing rather than" the actions of the trustees.

When the Charity's missing documents were submitted, the accounts were referred for scrutiny by the Commission's accountants. The accounts were found to be generally compliant with the Commission's Statement of Recommended Practice, though further guidance has been provided to the trustees for consideration when preparing future accounts.

² The terms misconduct and mismanagement are taken from section 76 of the Charities Act 2011. Misconduct includes any act (or failure to act) in the administration of the charity which the person committing it knew (or ought to have known) was criminal, unlawful or improper. Mismanagement includes any act (or failure to act) in the administration of the charity that may result in significant charitable resources being misused or the people who benefit from the charity being put at risk. A Charity's reputation may be regarded as property of the charity.

Conclusions

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

As a result of the Inquiry, the Commission ensured the Charity complied with its legal obligations to submit their annual accounting information.

The Charity ceased to be part of the Inquiry when it was no longer in default of its accounting obligations. This happened on 26 November 2013 when the Charity filed the last missing documents.

The Charity also filed the relevant documents for the financial year ending 5 April 2013, ensuring they have already fulfilled their legal obligations to file accounting information with the Commission for the next year in advance of the deadline set by the Commission.

Regulatory Action Taken

The Commission used its information gathering powers under section 52 of the Charities Act 2011 (the "Act") to order and obtain bank records and financial information of the Charity relating to the missing years accounts. These will be used in connection with the Commission's scrutiny of the accounts.

On 13 November 2013 the Inquiry exercised powers under section 84 of the Act to direct the trustees to prepare and complete the relevant missing annual accounts, reports and returns for the Charity and provide copies of these to the Commission.

The Commission provided regulatory advice and guidance about the trustees' duty to file the Charity's annual accounting information.

Issues for the wider sector

Trustees of charities with an income of £25,000 or over are under a legal duty as charity trustees to submit annual returns, annual reports and accounting documents to the Commission as the regulator of charities. Even if the Charity's annual income is under £25,000 trustees are under a legal duty to prepare annual accounts and reports and should be able to provide these on request. All charities with an income over £10,000 must submit an annual return.

Failure to submit accounts and accompanying documents to the Commission is a criminal offence. The Commission also regards it as mismanagement and misconduct in the administration of the Charity.

For those individuals who were not trustees at the initial date of default, when they became a trustee, they became responsible for making good the default.

It is important that the financial activities of charities are properly recorded and their financial governance is transparent. Charities are accountable to their donors, beneficiaries and the public. Donors to charity are entitled to have confidence that their money is going to legitimate causes and reaches the places that it is intended to. This is key to ensuring public trust and confidence in charities.

