

Inquiry Report

Yoruba Language and Cultural Heritage

Former Registered Charity Number 1148023



A statement of the results of an inquiry into Yoruba Language and Cultural Heritage (former registered charity number 1148023).

Published on 24 March 2016.

The charity

Yoruba Language and Cultural Heritage ('the charity') was registered with the Charity Commission ('the commission') as a charity on 9 July 2012. It was governed by a declaration of trust dated 18 June 2012.

The charity's objects were to advance the education of the public in the Yoruba language, heritage and culture.

Background and issues under investigation

On 7 August 2013 the commission was contacted by a company ('company A') that provided an online platform enabling donations to be passed, via its website, to non-profit organisations and charities. Company A had processed 5 donations for the charity from 5 separate credit cards; these payments were afterwards found to have been made without the knowledge of the credit card owners. The donations, amounting to almost £5,500, were refunded to the cardholders and the charity did not receive any money.

The commission opened a regulatory compliance case on 12 August 2013 to examine in more detail the concerns raised by company A.

On 29 November 2013 a further allegation was received from another company ('company B') that provided an online platform similar to company A. Company B had received 35 donations for the charity over a 6 month period amounting to just over £14,000. Company B had been notified that some of these donations, which had all been paid to the charity, were fraudulent.

Company A and company B had attempted to contact the charity concerning the nature of the donations but received no response.

The commission's regulatory compliance case established that:

- a bank statement provided by the charity to the commission at registration and intended as proof of income was not an authentic document
- the commission's records indicated the charity had 6 trustees
- twelve cheques to the value of £14,070 had been paid from the charity's bank account to 2 of the charity's trustees ('the 2 trustees') between March 2013 and December 2013 - one trustee received £13,020 and the other trustee received £1,050

As a result the regulatory compliance case was escalated and on 28 April 2014 the commission opened a statutory inquiry ('the inquiry') into the charity under section 46 of the Charities Act 2011. The inquiry closed on 24 March 2016 with the publication of this report.

The issues under investigation were:

- whether the charity had carried out any charitable activities and was operating for the public benefit
- decisions taken by the trustees to pay 2 of the trustees out of funds held in the charity's bank account
- whether and to what extent the trustees had complied with and fulfilled their duties and responsibilities as trustees

Findings

Issue 1) – whether the charity had carried out any charitable activities and was operating for the public benefit

The inquiry was concerned about the multiple donations to the charity that appeared to be obtained by fraudulent means. These suggested that the charity may have been a vehicle to test the use of illegally obtained credit cards or credit card details.

The commission was also concerned about the use of a bank account statement in the name of the charity, which was provided as proof of income, in support of the application to register the charity with the commission in 2012. The commission contacted the relevant bank while investigating its concerns and the bank informed the commission that the bank statement was 'not an authentic bank statement'. Based on the information available, it therefore appears to the commission that those seeking to register the charity provided a false bank statement as evidence of income at registration. Knowingly or recklessly providing false and/or misleading information to the commission is an offence under section 60 of the Charities Act 2011.

The inquiry wrote to the 6 individuals shown as trustees for the charity on the register, asking questions relating to the charity and the individual's role in relation to the charity. The inquiry only received responses from 2 individuals - Mr X and Mr Y - who were not the 2 individuals who had been in receipt of the charity's funds. Mr X and Mr Y claimed to have no knowledge of the charity and the inquiry found no evidence to establish that either of them had acted as a trustee of the charity.

Mr X promptly telephoned the inquiry in response. He stated that he lived at the address shown on the register as being associated with one of the trustees and that he had lived there for at least 20 years and had no knowledge of the trustee linked to that address on the commission's records.

Mr Y also promptly telephoned the inquiry in response to say that he knew nothing about the charity and that someone must be using his name.

Additional checks carried out by the inquiry did not provide any alternative addresses for the trustees.

The inquiry found no evidence that the charity was undertaking any charitable activity or of any funds being applied for charitable purposes. The charity did not have a website and the inquiry did not identify any public profile of the charity.

Issue 2) – decisions taken by the trustees to pay 2 of the trustees out of funds held in the charity’s bank account

Funds totalling £14,070 were withdrawn in favour of the 2 trustees, who were the only signatories for the charity’s bank account. Virtually all of the payments to the charity transferred electronically from company B to the charity’s bank account were paid out of the charity’s bank account, in many cases on the same day, by cheque to the 2 trustees. All cheques were signed - as required by the mandate - by the 2 trustees. The inquiry was unable to contact the 2 trustees and obtain an explanation for the expenditure.

The inquiry found that the charity’s bank account was closed on 13 February 2014 with the withdrawal of the balance of £400.76. There had been no other transactions relating to the account since December 2013. The inquiry established that the bank held no other open accounts in the charity’s name.

Issue 3) – whether and to what extent the trustees had complied with and fulfilled their duties and responsibilities as trustees

The failure of those administering the charity to engage with company A or company B when approached by them and the failure to report a serious incident in respect of the apparent fraud to the commission is of regulatory concern.

Despite efforts, the commission was unable to locate or contact the 2 trustees who had received funds from the charity. Based on the evidence available the inquiry was not satisfied that the payments were legitimate charitable expenditure.

The charity’s first annual information return was due by 15 June 2014 but no information was submitted either by that date or subsequently. The trustees therefore failed to comply with their obligations under the Charities Act 2011.¹

Conclusions

The commission concluded that there had been misconduct or mismanagement in the administration of the charity on the part of at least 2 of the individuals who were registered as trustees.

Breaches of trustee duties identified by the commission included a failure to comply with the reporting requirements contained in the Charities Act 2011. The commission was unable to contact anyone listed in its records as a trustee of the charity who could provide any information relating to the charity.

The commission found no evidence that the charity was operating for the public benefit or of any associated charitable expenditure or activity.

The commission concluded that it was possible that donations were fraudulently obtained and diverted to the bank accounts of 2 individuals for private gain and that the charity had been set up and/or used purely for this purpose.

¹ The level of information a charity is required to supply to the commission is dependent on its annual income. As a minimum a charity is required to provide an annual update or annual return and may also be required to submit its annual report and accounts if its income for that financial year is above £25,000.

Regulatory action taken

The inquiry reported its concerns to Action Fraud and the police.

The commission removed the charity from the register of charities on 25 March 2015 on the grounds that it was no longer operating. This has reduced the risk to charity funds.

Issues for the wider sector

Charities must comply with the legal requirements for the preparation of accounts and reports set out in the Charities Act 2011. The submission of information returns, and annual reports and accounts, within a statutory deadline of 10 months, is a vital component in ensuring the sector is transparent and accountable to the public. Failure by charity trustees to account for the charitable funds that they are charged with administering by virtue of their position amounts to misconduct and mismanagement.

The commission expects charity trustees to engage appropriately with the commission as regulator and to co-operate fully when it is exercising its statutory powers. This is particularly relevant where the commission has opened a statutory inquiry. Charity trustees are under a legal duty to cooperate with the commission and the courts have been very clear about this. Whether they do so or not may be a relevant factor in assessing whether misconduct or mismanagement may have taken place in a charity and considering whether any regulatory action is proportionate.

If charity trustees knowingly or recklessly provide the commission with information which is false or misleading in a material way they may be guilty of an offence under section 60 of the Charities Act 2011.

All charity trustees have a fundamental duty to protect the property of their charity and to secure its application for the objects of the charity. In order to discharge this duty it is essential that there are adequate internal financial and administrative controls over the charity's assets and their use. Trustees must use charitable funds and assets reasonably, and only in furtherance of the charity's objects. 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.