CHARITY COMMISSION
FOR ENGLAND AND WALES

Inquiry Report
BIETEC Learning and Development Training Centre

Registered Charity Number 1108129

A statement of the results of the inquiry into BIETEC Learning and Development Training Centre (registered charity number 1108129) ('the charity').

Published on 20 December 2016.

The charity

The charity was registered with the Charity Commission ('the commission') on 16 February 2005. It is unincorporated and governed by a trust deed dated 1 September 2004, as amended on 16 February 2006.

The charity's objects are to advance the education of the public, in particular by the provision of vocational training.

More details about the charity are available on the **register of charities** ('the register').

Background to the issues under investigation

In July 2013, the commission received information from the Department of Education following a failed OFSTED inspection[1] of an independent school that the charity was believed to be running.

The commission opened an operational compliance case to examine regulatory concerns identified as a result of receiving this information. It sought information from the trustees to understand how the charity was being operated and managed and how it was applying its funds. It was subsequently established through the commission's compliance case that the charity was not operating this school, although the school was being operated from the same premises and was being run by at least one of the charity's trustees.

The commission identified serious concerns about the charity's governance, in particular the charity's relationship with other entities connected to the trustees, including a company called Birmingham Institute of Education Training and Technology ('BIETTEC'). This private company, which provided adult education, operated from the same premises as the charity and was controlled and operated by 2 of the charity's 3 trustees. The commission was concerned that these arrangements may have given rise to unauthorised private benefits. The arrangements raised regulatory concerns whether adequate steps were being taken to avoid or manage potential conflicts of interest arising from the trustees' involvement in the charity and BIETTEC. The commission also identified that the charity had been applying its funds outside of its purposes and therefore the trustees were in breach of trust and of their legal duties.

During the commission's compliance case, it was also identified that there were significant discrepancies between the income and expenditure recorded in the charity's bank account and that published in the charity's accounts.

Following a period in which the trustees failed to comply with requests for information in relation to these discrepancies, and other specific orders issued under the Charities Act 2011 ('the Act') to gather information, the commission opened a statutory inquiry under section 46 of the Act on 8 July 2014.

1 **OFSTED report into the Alyssa School**.

Inquiry scope

The inquiry was opened in order to examine serious regulatory concerns over the governance of the charity and how the trustees were discharging their legal duties, in particular whether there was financial mismanagement within the charity, whether there were risks to the charity's funds, whether conflicts of interest had been adequately managed and whether the trustees were willing or able to address the commission's concerns.

The inquiry was opened to investigate and consider the following specific matters:

- the administration and financial management of the charity by the trustees, in particular the apparent discrepancies between the charity's published income and expenditure and the deposits and payments in the charity's bank account
- the potential risks to significant charitable funds
- whether the charity was being used for private benefit
- to examine the transactions between the charity and BIETTEC[2], including whether conflicts of interest were properly managed
- the lack of engagement and non-compliance with an order issued by the commission for information from the trustees
- whether or not the trustees had complied with and fulfilled their duties and responsibilities as trustees under charity law

Findings

The administration and financial management of the charity by the trustees, in particular the apparent discrepancies between the charity's published income and expenditure and the deposits and payments in the charity's bank account[3]

The inquiry established that there were significant discrepancies between the charity's reported income and expenditure and the actual movement of funds in the charity's bank account over a period of 4 financial reporting years (2009-2013). The commission identified that £969,319.91 of income and £719,836.65 of expenditure had passed through the charity's bank account but had not been declared in the charity's accounts.

When questioned about these discrepancies, the trustees explained that the charity was not the intended recipient of these payments, which were paid by adult students of the connected company, BIETTEC, for education courses run by this company. The trustees explained to the inquiry that this was an error that was the result of a mistake on promotional material for courses offered by BIETTEC, with the charity's bank account details wrongly being present instead of those of BIETTEC.

2 Company number: 04314444. This company is currently in liquidation.

3 This section also deals with the specific matters detailed in the inquiry scope section relating to a) the potential risks to significant charitable funds and b) the examination of the transactions between the charity and the connected company BIETTEC, including whether conflicts of interest were properly managed.

The inquiry verified the trustees' claims and established that these 'misbanked' funds were redirected to BIETTEC's bank account. These funds were not recorded in the charity's accounts as income and expenditure[4]. The inquiry was satisfied that there had been no misapplication or misappropriation of the charity's funds as a result of these identified discrepancies.

However, the inquiry found that this issue was allowed to continue over a sustained and prolonged period of time (over 3 years). The trustees should not have permitted the bank account to be used in this way for so long. The commission's guidance[5] advocates regular bank reconciliations which would have identified this problem and the inquiry established that it was negligent of the trustees to allow the problem to persist. This demonstrated a lack of adequate or responsible governance, and a clear lack of scrutiny and proper oversight of the charity's finances by the trustees.

It was an inappropriate mixing of funds and indicated an inadequate level of separation between the charity's finances and those of the connected training provider, BIETTEC, as well as between the trustee's charitable and commercial interests. The inquiry found that the trustees' failure to adequately manage the charity's finances demonstrated mismanagement in the administration of the charity.

The inquiry identified that the charity had written off a figure of £279,278, which was recorded in the charity's accounts for the financial year ending 31 March 2010. On the face of the accounts, this raised a serious regulatory concern that the charity had suffered a material loss, which had been written off. The inquiry established that the write off recorded in the accounts related to a failed attempt to minimise the tax liability of BIETTEC. The trustees reported to the inquiry that their professional advisers had recommended BIETTEC made a transfer of £488,000 to the charity. An entry for that sum was recorded in the charity's accounts for the financial year ending 31 March 2007. However, from examining the charity's financial documents, trustee meeting minutes, interviewing the trustees and liaising with external bodies, the inquiry established that the entry in the accounts of £488,000 was simply a book entry, which was never actually paid to or received by the charity.

The trustees explained to the inquiry that the book entry was never adjusted prior to 2010 because of ongoing discussions with HMRC as to whether the transaction would be allowable. The inquiry established that the £279,278 'write off' was the remaining balance of the notional transfer between BIETTEC and that the reasons given for the accounting adjustment for the financial year ending 31 March 2010 were factually incorrect. Whilst the charity did not appear to suffer a material or actual financial loss, as had first been indicated, the commission is not satisfied that the accounts presented to the commission presented an accurate position of the charity's financial affairs during that period.

The inquiry found that these actions demonstrated misconduct or mismanagement in the administration of the charity.

Furthermore, the trustees did not provide any evidence to the inquiry to demonstrate what benefit the charity would have derived from a notional or physical cash transfer from BIETTEC if it was simply offset by expenditure payments back to BIETTEC.

The inquiry found that the lack of segregation in the affairs of the charity and BIETTEC and the 'book transfer' raised a material concern that an attempt was made to use the charity to obtain a more favourable tax position for BIETTEC, in which 2 of the trustees had a beneficial interest.

4 Accounting uses a number of principles to identify what is included and what is excluded from the charity's accounts. In the case of recognising income there are 3 principles: entitlement, certainty of receipt and measurability. As the charity was not entitled to the money, it was correct not include the funds in its accounts as to do so would have overstated its income because the funds belonged to another party. Similarly, the refunding of the error did not constitute a cost to the charity that would be reported because it was simply returning those funds.

5 **Internal financial controls for charities (CC8)**.

Whether the charity was being used for private benefit

The inquiry identified that the charity entered into an arrangement with a commercial company called EMRDA Limited[6], in which the charity rented office space from this company. Two of the charity's trustees were directors and shareholders of this company and benefitted from this arrangement as a result.

The charity's accounts for the financial year in question (ending 31 March 2010) stated that 'The charity has not delivered educational programmes to the public this year, but, instead concentrated on providing food and medical help overseas'. However, the inquiry established that the charity had been charged £10,350 by EMRDA Limited for office space. At a meeting held with the trustees on 30 April 2015, the trustees explained that the charity was occupying 2 floors of the building at this time but could not adequately explain why such premises were required when the charity was not undertaking any activities in the UK. The commission established that the charity applied funding overseas, rather than sending medical or food provisions that may have required such storage or office space. The inquiry found that the decision to enter into this arrangement was not one that was either properly taken or on the evidence seen one that could be said to be in the best interests of the charity.

In addition, the conflicts of interest that were present when the trustees entered into this arrangement were not addressed or managed appropriately. As a result of the inquiry identifying these payments and explaining to the trustees that they were not properly authorised, the trustees agreed to repay a percentage of the funds that were received by EMRDA back to the charity.

The lack of engagement and non-compliance with an order issued by the commission for information from the trustees

During the inquiry, a number of issues were experienced with the level of disclosure by the trustees and numerous delays in receiving requested information.

Whilst the trustees were not uncooperative with the inquiry, their repeated failures to provide complete answers within specified periods affected the conduct and length of the inquiry and raised concerns about their competence and ability to discharge their role and duties. This also raised concerns as to how seriously the trustees were taking the commission's inquiry.

The trustees failed to comply with information orders dated 19 November 2014 and 29 July 2015 on time which was further evidence of mismanagement in the administration of the charity by the trustees.

Whether or not the trustees had complied with and fulfilled their duties and responsibilities as trustees under charity law

The inquiry established that the trustees had no basic formal written policies in place to govern and manage the charity that would be expected for a charity of its size and nature, such as a conflicts of interest policy. This raised regulatory concerns as it was clear that 2 of the trustees, who formed the majority of the trustee board, had long standing conflicts of interest in relation to their role as trustees of the charity and their connections to connected companies.

6 Company number: 04641568. This company has now been dissolved.

The inquiry established that there were no clear procedures or practices employed by the trustees to manage conflicts. The inquiry identified that records of the charity's meeting minutes did not record conflicts of interest being identified or managed appropriately. These records were deficient in detailing a number of decisions made by the trustees which would have involved a conflict of interest of the majority of the trustees. The inquiry found that there were inherent conflicts of interest and there was a clear lack of separation between the trustees' personal, business and charitable interests which could lead to further regulatory concerns if not addressed.

The inquiry also established that the charity had for some time been applying its funds outside of its charitable purposes. Having been established solely for the advancement of education, the inquiry identified that the trustees had applied funds (approximately £14,000) to Pakistan for poverty relief purposes.

The inquiry found that the charity was unable to adequately account for payments made to Pakistan. The trustees were unable to provide adequate receipts and documentation regarding this expenditure. They explained that these funds would have been given to a trusted individual to take to Pakistan to distribute amongst individuals in need. The trustees were unable to adequately explain to the inquiry's satisfaction what due diligence they had undertaken on individuals entrusted to take charitable funds overseas and disseminate them to beneficiaries.

The commission was unable to reconcile receipts received in Pakistan with payments from the charity's bank account. In mitigation, the trustees explained that these funds may have been separate charitable expenditure provided by themselves in a personal capacity, rather than the charity's funds. Whilst the commission requested a full explanation from the trustees regarding this expenditure, the trustees were unable to adequately explain or evidence the source of the funds applied in Pakistan. It is apparent to the commission that at least a proportion of the funds sent to Pakistan were charitable and that these funds were applied outside of the charity's objects.

The charity had no formal processes or written policies to explain how funds were applied and received overseas, the financial controls that applied to such processes or how the application of the funds was verified or monitored. The inquiry has not been satisfied that funds applied overseas by the charity was a proper application of charitable funds and constituted a misapplication of those funds. Whilst the trustees may have applied such funds in good faith and with the intention of assisting individuals in poverty, the inquiry found that the inadequate processes and safeguards associated with the application of these funds demonstrated that the trustees had failed in their duties to manage the charity's funds responsibly, resulting in undue risk to the charity's assets. The application of charitable funds outside of the charity's purposes also demonstrated that the trustees had failed in their duties to ensure the charity operated in furtherance of its charitable purposes.

The trustees made representations to the commission that these deficiencies and shortcomings arose as a result of a lack knowledge and understanding by the trustees of their legal duties as trustees under charity law and of the requisite skills with which to effectively manage a charity.

Conclusions

The commission found that there were significant and inherent weaknesses in the charity’s governance and management that subjected the charity’s funds to undue risk of misappropriation or misapplication. The trustees did not have sufficient oversight of the charity’s finances and there was an environment in which a lack of separation between the trustee’s personal, commercial and charitable interests allowed conflicts of interest to go unchecked and unmanaged, resulting in authorised private benefits. Together, this demonstrated mismanagement of the charity by the trustees.

Although most of the evidence of misconduct or mismanagement found occurred between 2007 and 2010, appropriate and reasonable steps were not being taken by the trustees to adequately manage and administer the charity. The commission’s intervention was necessary in order to protect charitable funds and to put the charity’s management on to a proper footing going forward.

As a result of the commission’s findings, the commission issued an Order to the charity using its powers under section 84 of the Act to take various steps to improve the administration and governance of the charity, including a review of the trustee board and trustee training needs, as well as steps to review the charity’s governance policies and record keeping. Some improvements have been made already including the implementation of policies and procedures to ensure that risks to charitable funds are managed appropriately. The charity is also actively seeking to appoint additional independent trustees.

The commission is monitoring the implementation of the order and will continue to monitor the progress made by the trustees to ensure full compliance with the Order.

Regulatory action taken and conduct of the inquiry

Due to the nature of the commission’s concerns, the inquiry examined the charity’s financial documentation in detail at a books and records visit to the charity in December 2014 to ascertain whether there had been any misapplication or misappropriation of the charity’s funds and whether there were any current or ongoing risks to the charity’s funds.

The inquiry team also met with the trustees in April 2015 to discuss the charity’s internal financial controls and governance policies and procedures in order to consider their adequacy and whether it was necessary for the commission to use its regulatory powers to direct changes to protect the charity’s assets.

The commission used its powers under section 47 of the Act to direct the trustees to provide information necessary for the discharge of its regulatory functions.

Much of the misconduct and mismanagement referred to occurred between 2007 and 2010 and the charity’s income levels have significantly reduced since then. It is now a very small charity. The charity’s current income is mainly derived by donations from the trustees themselves.

Bearing these factors in mind the Commission considered that the most proportionate approach to address the misconduct and mismanagement identified during the course of the inquiry, was to direct the trustees to implement an action plan issued by Order under section 84 of the Act[7]. This Order requires the charity to implement a range of actions within a specified timeframe in respect of the charity's governance and administration, thereby addressing risks identified to the charity's property or property coming to the charity in the future. The Order requires, amongst other matters, that the trustees review the charity's governance policies and charitable objects and take appropriate steps to put these onto a proper footing and consistent with the requirements of charity law. The inquiry's engagement also resulted in 2 of the trustees repaying £2,895 to the charity, following the commission identifying apparent unauthorised benefit to these individuals received via a commercial arrangement entered into between the charity and a private company. The commission acknowledges that this repayment was a goodwill gesture by the trustees and was not repaid as a result of regulatory action taken by the commission.

Whilst improvements have been made in the charity's internal governance, the commission is continuing to monitor the charity's compliance with its Order and will continue to do so until it is satisfied that the charity is being run effectively in furtherance of its charitable purposes.

Issues for the wider sector

The trustees of a charity are ultimately responsible for running and managing their charity and for ensuring that the charity and its assets are properly protected. Trustees must safeguard their charity's assets and ensure their charity is properly protected against financial risks. The trustees must ensure that they have adequate oversight of their charity's finances and have appropriate and robust policies and procedures in place to manage their finances. It is important both for trustees to fully understand their duties and to fully cooperate with the commission in order to ensure that regulatory concerns are addressed as soon as possible.

The trustees have a legal duty to act in their charity's best interests when making decisions as trustees. Trustees may have multiple roles or positions which could affect their ability to make decisions on behalf of a charity, including being directors or members of companies that do business with a charity or being employed by the charity. Where decisions need to be made in which a trustee has a personal or other interest, this is a conflict of interest and must be identified and managed appropriately in order to comply with the legal duties of trustees. If there are inherent conflicts on the trustee board due to the nature of the charity's relationships with other bodies, then the trustees need to ensure there are a sufficient number of independent trustees appointed. Those trustees affected by continuous or inherent conflicts should give serious consideration as to whether they can properly discharge their duties and responsibilities as trustees to the charity and properly and lawfully manage the conflicts of interests.

A charity must be established to further exclusively charitable purposes for the public benefit and should be managed responsibly and prudently by its trustees. Charities must not be established in order to personally benefit the founders or trustees, or as an extension of a private commercial business.

7 The Order was issued on 29 April 2016.

When engaging with charities, the commission expects trustees to fully cooperate with its requests and provide full, frank and honest answers and information or documents. This will help ensure that the commission's engagement is completed as soon as possible. If trustees fail to produce information or documents by dates specified, or fail to comply with requests, this in itself may be taken as evidence of misconduct and/or mismanagement in the administration of the charity.

These legal duties and responsibilities are set out in more detail in the commission's publications: **The essential trustee: what you need to know, what you need to do (CC3)**, **The hallmarks of an effective charity (CC10)** and **Manage a conflict of interest in your charity**.