CHARITY COMMISSION
FOR ENGLAND AND WALES

Inquiry Report
Masoom

Registered Charity Number 1124976

A statement of the results of an inquiry into Masoom (registered charity number 1124976).

Published on 13 January 2017.

The charity

Masoom ('the charity') was registered on 14 July 2008. It is governed by a constitution dated 13 June 2008 as amended on 6 June 2014.

The charity's objects are:

- the relief and assistance of people, including those in financial need, in any part of the world who are the victims of war or natural disaster, trouble or catastrophe
- the relief of financial hardship, either generally or individually, of people living in Pakistan and Turkey, in particular by making grants of money for providing or paying for items, services or facilities which they could not otherwise afford through lack of means

The charity's entry on the register of charities can be found on **GOV.UK**.

Issues under investigation

On 28 May 2015, the Charity Commission ('the commission') undertook a compliance visit ('the visit') at the charity's premises. The charity was proactively identified for a visit due to its international operations in high risks areas such as the Occupied Palestinian Territories ('OPT'), Pakistan and Syria.

Charities which operate internationally can be more vulnerable to abuse or harm as a result of where and how they operate. The visit therefore sought to review the charity's polices and financial records, to assess whether the charity was operating in accordance with its stated objectives, and to ensure the trustees were complying with their legal obligations in exercising control and management over the charity and its activities overseas.

The commission established that for the period 7 January 2013 to 6 February 2015 the trustees expended a total of £129,465.78 ('the funds') in OPT, Pakistan, Syria and Tanzania in support of humanitarian aid projects.

Following a review of the charity's financial books and records ('the review'), and consideration of the responses of the trustees to the issues presented, it was the commission's finding that the trustees were unable to produce sufficient evidence to show, and account for, the proper application of the funds in these areas. Trustees must as an absolute minimum, keep proper and adequate financial records for both the receipt and use of funds and audit trails of decisions. Records of both domestic and international transactions must be sufficiently detailed to show that funds have been spent properly and in a manner consistent with the purpose and objectives of the charity.

The review showed that between 15 April 2013 to 8 October 2014, the trustees transferred over £53,000 to the personal bank account of 2 individuals acting as the charity's agents ('the agents') inside Syria. During the visit the trustees stated that they had no evidence in any form in support of how these funds were expended in furtherance of the charity's purposes in Syria by the agents. The trustees therefore failed to comply with their legal duties under the Charities Act 2011 ('the act') and the provisions of the charity's governing document. There was also a risk of tax consequences as under The Finance Act 2010 as if a charity cannot provide evidence to HMRC that it took the necessary steps, the expenditure may be regarded as non-charitable and tax exemptions restricted accordingly.

During the visit, the trustees were unable to produce any records to evidence the due diligence they stated they had carried out in respect of those they employed, used as partners or otherwise worked with - including the agents - both in the UK and internationally. The commission saw no due diligence records during the visit. In the absence of any written records relating to the due diligence the trustees stated had been undertaken, the commission was unable to reconcile the account provided by the trustees and its findings during/from the visit.

On 30 July 2015, as a result of the commission's findings during the review, a statutory inquiry ('the inquiry') into the charity was opened under section 46 of the act.

The scope of the inquiry was to examine a number of issues including:

- the administration, governance and management of the charity by the trustees with specific regard to levels of due diligence carried out in respect of any partners with whom the charity operates or to whom the charity provides funding
- the financial controls and management of the charity
- whether or not the trustees had complied with and fulfilled their duties and responsibilities as trustees under charity law

After opening the inquiry, on 18 August 2015 the commission exercised its legal powers and made an order under section 84 of the act directing the trustees to take specified action within a set timeframe - further information is provided under 'regulatory action taken'.

The inquiry was kept open to ensure compliance with the direction. The inquiry closed on 13 January 2017 after the monitoring period, with the publication of this report.

Findings

The administration, governance and management of the charity by the trustees with specific regard to levels of due diligence carried out in respect of any partners with whom the charity operates or to whom the charity provides funding

The charity's trustees are responsible for its management and administration. The charity is managed by 4 trustees. The trustees have maintained a history of filing all of the charity's statutory returns within the required timeframes. At the time of the visit, the charity did not have any employees and relied on a number of volunteers who were delegated certain tasks and functions.

Charity trustees must use their charity's funds and assets only in furtherance of the charity's purposes. They must avoid undertaking activities that might place the charity's funds, assets or reputation at undue risk. In practice, this means that to meet their legal duty to protect charity assets with the necessary care and properly to assess risk, trustees must carry out appropriate and proper due diligence on individuals and organisations that the charity gives grants to or uses to carry out charitable projects and help deliver its work. This involves the charity assessing the risks and conducting proper due diligence checks that they are appropriate partners for them to work with and carrying out periodic reviews to ensure that those partners remain suitable and appropriate.

Trustees must also be able to demonstrate that charitable funds and assets have been used for the purposes for which they were intended and that they can be accounted for in accordance with charity law requirements. Monitoring is part of the process for trustees to ensure they are able to account for the proper use of the charity's funds and that they maintain donor confidence. This includes taking appropriate and reasonable steps to verify the proper end use of funds where the charity's funds are provided to agents and/or partners to apply on the charity's behalf. Verifying the proper end use of funds is not just about ensuring there is a record of the transfer of funds from a charity's bank account to an agent or partner.

As a result of information obtained and documents reviewed during the visit, the commission found that the trustees were unable to provide any records to evidence the due diligence they confirmed had been carried out in respect of those the charity employed, used as partners or otherwise worked with - including the agents - both in the UK and internationally. The commission examined the charity's records from the date of its registration in July 2008 to the date of the visit.

With regards to the agents, the trustees informed the commission that they had seen video footage and photos of their work in Syria and a news documentary ('the documentary')[1] which featured them carrying out work in Syria. The trustees were unable to provide the commission with access to or copies of the video footage and photos to which they referred. The trustees stated that they felt, based on the documentary alone, that the agents were accordingly trustworthy individuals. The commission viewed the documentary and ascertained that it was aired on 1 April 2014. The commission found that the trustees had, prior to the airing of the documentary, already transferred funds to the agents. They were unable to evidence the due diligence undertaken prior to instructing the agents. The inquiry's view was that the footage in the documentary was insufficient information on which to solely base a decision to work with the agents. To be assured that an organisation or individual is an appropriate and suitable partner to work with requires due diligence on the part of trustees. This process involves ensuring that the aims and ways of working of a prospective partner are compatible with a charity's ethos and purposes and that assurance have been obtained that they are capable of delivering the proposed activities or services and had in place appropriate systems of control and reporting. It is the responsibility of charity trustees to evidence that they have complied with their legal duties; the commission saw no evidence of this process in the charity's records and finds that the trustees failed to manage the risks associated with identifying and using an implementing partner, in this instance the agents, to act on the charity's behalf.

During the inspection of the charity's records, the commission saw an email which was sent on 1 April 2014, prior to the documentary being aired, where the trustees informed the agents that they were no longer going to authorise the transfer of any funds to the agents' personal bank account. This was due to charities being "under increasing pressure from various fronts, especially with monetary donations towards conflict zones". Later in the day on 1 April 2014 the documentary aired, which featured the agents and their activities in Syria. The trustees sent a further email, on 1 April 2014 to the agents reversing their earlier decision not to transfer the charity's funds into the personal bank account of the agents. This email sets out that the trustees "are satisfied that due to the extraordinary condition you [the agents] are working under it may not be possible to meet each and every request set by Masoom, as this is not an ordinary working environment". The trustees' email goes on to recommend, rather than require, that the agents provide, "copies of receipts, invoices and a breakdown of costs and purchases...".

The fact that the trustees reversed their previous decision based solely on the footage in the documentary raises concerns about the quality of the trustees' decision making and how easily they seemed to be swayed.

On 8 March 2014, 3 of the charity's trustees attended an event about trustee duties - 'managing your charity lawfully and effectively' at which commission officials spoke about the legal duties of charity trustees and specifically those working internationally. This event covered, amongst other subjects, regulatory advice and guidance provided by commission officials on trustees and trustee responsibilities, good governance and managing risks. In addition, on 24 April 2014, one of the charity's trustees attended a further event titled 'charities working in, or sending money and/or humanitarian aid to Syria and neighbouring countries' at which commission officials provided further regulatory advice and guidance. This event covered, amongst other subjects, monitoring charitable expenditure in Syria and sending money, aid or people to Syria. It was therefore beyond doubt that the trustees were aware of and knew, or ought to have known, and understood their obligations and duties as trustees.

1 Channel 4 news - Syria War: British Muslims on the front line **https://www.channel4.com/news/syria-british-charity-workers-tauqir-sharif-racquell-hayden**.

Despite this, the trustees continued to send charitable funds overseas without appropriate due diligence or taking steps to monitor and verify the proper end use of funds by the agents. The inquiry found that there was no demonstrable evidence that the trustees made any changes to their management/due diligence systems following attendance at these events. The inquiry's analysis of the charity's bank statements shows a total of £38,114.75 was transferred to the agents, for projects in Syria in the period that post-dates the March 2014 event at which regulatory advice and guidance was given. Taking into account the advice the trustees were provided with, it is the inquiry's finding that failure to take proper due diligence and monitoring steps constitutes mismanagement and/or misconduct on the part of the trustees.

Since the opening of the inquiry and in response to the commission's regulatory concerns, the trustees took the decision not to undertake any charitable activities whilst they regularise the charity's administration and implement new policies and procedures.

The financial controls and management of the charity

It is a duty of charity trustees to ensure that the charity's resources are protected in order that the charity can fulfil its aims. This means ensuring internal financial controls are in place in order to ensure that the charity's resources are safeguarded, can be accounted for and the charity can fulfil its aims. Internal financial controls are just one part of a charity's overall control framework (which includes the charity's systems and activities). The aims of internal financial controls are to protect assets, identify and manage the risk of loss or waste, ensure financial reporting is robust and trustees comply with charity law and regulation relating to finance.

In order for a charity to achieve its aims, the trustees must ensure that the charity's assets are properly used, its funds are spent effectively and its financial affairs are well managed. This includes, but is not limited to, keeping sufficient accounting records to explain all transactions and show the charity's financial position. Correct administration of the charity's finances ensures risks to assets are minimised and that the trustees are able to prepare timely and relevant financial information for their own review, to the charity's accountants/auditors and the commission.

Trustees have a duty to manage their charity's resources responsibly and to comply with their charity's governing document and the law. Clause 24(1) of the charity's governing document states that the trustees must comply with their legal obligations in relation to "the keeping of accounting records for the charity".

The inquiry established that the trustees did have in place a Financial Management and Controls Policy ('the policy'). The policy set out that the trustees must retain the charity's financial records in order to comply with their legal obligations. The policy also stated that every payment out of the charity's bank account must be supported by an invoice. The inquiry found that the trustees had not complied with the charity's own policy. The inquiry found that the trustees' failure to adhere to the charity's own policy and guidelines and failure to take sufficient steps to implement it is evidence of mismanagement and/or misconduct in the administration of the charity.

Even if it was not contained in the charity's policy document, the failure to maintain adequate records of expenditure to explain transactions meant that the trustees were not complying with the governing document nor their duty to protect and manage resources responsibly.

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

Trustees must accept ultimate responsibility for directing the affairs of a charity, and ensuring that it is solvent, well-run, and delivering the charitable outcomes for the benefit of the public for which it has been setup. The commission's guidance **The essential trustee: what you need to know, what you need to do (CC3)** explains that as their part of their core duties trustees must:

- act in the charity's best interests
- apply the charity's income and property only for the purposes set out in the governing document
- ensure that the charity does not breach any of the requirements or rules set out in its governing document and that it remains true to the charitable purposes and objects set out there
- comply with the requirements of other legislation and other regulations (if any) which govern the activities of the charity
- use reasonable care and skill, making use of their skills and experience and taking advice when necessary

The inquiry found there was evidence of misconduct and/or mismanagement in the charity's administration by the trustees. There was evidence of poor management of, and lack of records of due diligence relating to and monitoring of, the charity's partners - including the agents. There were failings relating to the trustees financial management, to follow basic requirements in the governing document and in the overall governance of the charity. As a result, the inquiry found that the trustees had not complied with or fulfilled their duties as trustees under charity law.

Conclusions

The commission concluded that there was evidence of poor financial management and governance in the charity. There was evidence of misconduct and/or mismanagement in the charity's administration by the trustees, including in particular, the trustees:

- did not keep sufficient accounting records to explain the charity's transactions and activities
- did not manage properly its relationship with agents overseas - they were unable to evidence and account for the proper end use of the charity's funds applied internationally/overseas
- failed to comply with the terms of the charity's governing document and under charity law in respect of keeping accounting records
- did not implement and follow the charity's own Financial Management and Controls Policy
- did not properly discharge their legal duties as trustees under charity law - they failed to act in the best interests of the charity or with reasonable care and skill

The commission acknowledges that the trustees co-operated with the inquiry throughout, as they are expected to. They responded responsibly to the commission's regulatory concerns and its criticism of them.

In response to its findings, the commission exercised its powers to issue a direction to the trustees for them to take steps to improve the management and governance of the charity - as set out in 'regulatory action taken'. It kept the inquiry open to monitor compliance with this. The charity was revisited on 27 May 2016 and as a result of outstanding concerns relating to the charity's use of the agents, the commission exercised further regulatory powers - as set out in the 'regulatory action taken'.

Regulatory action taken

The commission issued orders under section 52 of the act to obtain the charity's bank statements.

On 18 August 2015 the commission exercised its legal powers and made an order under section 84 of the act directing the trustees to take specified action within a set timeframe. The order was made as the commission was satisfied that, at the time:

- there had been misconduct or mismanagement in the administration of the charity
- it was necessary or desirable to act for the purpose of protecting the property of the charity

The order directed the trustees to take steps to recover evidence of the charity's expenditure which could not be accounted for, to cover the period 15 April 2013 to the 28 May 2015 and ensure that future records are maintained, as required by law ('action 1'). Action 1 also stated that if the trustees were unable to recover evidence of the expenditure, the charity's trustees should take steps to recover or repay the funds to the charity. The order directed that the trustees must improve the charity's financial management, due diligence and general governance ('actions 2 and 3').

On 27 May 2016, as part of the inquiry, the commission re-visited the charity to establish and test the trustees' compliance with the section 84 order.

The inquiry found that the trustees complied with actions 2 and 3, but not compliant with action 1.

In relation to action 1, the inquiry established and verified that the trustees recovered sufficient evidence to account for the charity's expenditure (£75,650.03) in the areas of OPT, Pakistan and Tanzania.

The inquiry found that the records provided by the trustees in relation to the charity's activities in Syria were insufficient to demonstrate the proper charitable application of the £53,815.75 expended by the charity's agents inside Syria for the period of 15 April 2013 to 8 October 2014. The records produced consisted of overseas expenditure forms (retrospectively completed by the trustees) along with photos and videos. As a result, the trustees could not fully account for the proper use of these funds in accordance with the trustees' legal duties under the act and the charity's governing document.

In the trustees' report provided to the inquiry, which was required as part of the direction, the trustees stated "...the raised funds of £129.687.38 have been used solely for projects in the following countries Pakistan, Turkey's border with Syria, Gaza and Tanzania". The inquiry could not see how the trustees could satisfy themselves of this and that they have complied with their legal duties and responsibilities, given the insufficient records obtained from the charity's agents.

The commission concluded that the trustees were only partially compliant with action 1, given the issues about the sufficiency of records in respect of the £53,815.75 expended by the charity's agents in Syria. The commission is not satisfied that the funds expended in Syria can be fully accounted for and considered further regulatory action. Restitution and recovery of the funds[2] in this particular case and circumstances was not considered viable. However, the commission exercised other regulatory powers.

2 **https://www.gov.uk/government/publications/restitution-and-recovery-of-charitable-funds-charity-commission-policy/the-charity-commissions-policy-on-restitution-and-the-recovery-of-charitable-funds-misappropriated-or-lost-to-charity-in-breach-of-trust**

Prior to the commission's revisit to the charity, the trustees provided the commission with various policies and procedures which, if adhered to, will assist the trustees in demonstrating compliance with their legal duties. However, owing to the trustees' decision not to undertake any further activities whilst the inquiry was ongoing it has not been possible to test and evidence the trustees compliance with these new policies and procedures; this will be addressed by examining the charity's records and adherence to its own policies when the commission revisits the charity in the future as part of continued post inquiry monitoring.

As a result of the failure to comply with action 1 and the commission's concerns regarding the charity's use of the agents and the failure to provide sufficient records to evidence expenditure in Syria, on 28 September 2016 the commission used its powers under section 84A of the act, directing the trustees not to employ or procure the agents to hold, apply, distribute, expend or otherwise transfer the charity's funds or other property held on behalf of the charity until such time as the order is either varied or revoked by the commission. The order directs the trustees not to i) employ or procure the agents to hold, apply, distribute or transfer the charity's funds or other property, ii) make representations that the agents act for the charity and iii) make representations (by means of the charity's website) that the charity operates in and fundraises for activities in Syria when it currently does not, unless they can provide sufficient evidence to the commission that they can comply with their legal duties under charity law, the charity's governing document and its own policies and procedures.

In addition, following the closure of the inquiry, and unless there is reason to do so sooner, the commission will also revisit the charity again within 18 to 24 months to ensure that the trustees are complying with their legal duties and responsibilities under charity law and are implementing the processes and procedures which have been put in place as a result of the commission's section 84A order issued on 18 August 2015.

In addition to the orders, as a result of the commission's engagement with the trustees and a review of the charity's records the commission identified regulatory concerns relating to the charity's governance and record keeping and regulatory advice and guidance was given under section 15(2) of the act in respect of:

- decision making
- due diligence, monitoring and verifying the end use of charitable funds
- record keeping
- holding, moving and receiving funds safely

Issues for the wider sector

The purpose of this section is to highlight the broader issues arising from the commission's assessment of the issues raised publicly that may have relevance for other charities. It is not intended as further comment on the charity in addition to the findings and conclusions set out in the earlier sections of this report, but is included because of their wider applicability and interest to the charity sector.

Charities working internationally

Many charities are based in the UK and send money to projects, charities, not for profit organisations and direct to beneficiaries in other countries - these charities carry out invaluable work, in challenging circumstances, often helping the neediest in society. Trustees of such charities may need to take additional steps to ensure that charitable funds are properly used and reach intended beneficiaries. In some cases, the risks will be significantly higher. Sometimes these risks arise because the charity is not on the ground to check funds have been spent properly, requiring trustees to consider carefully what specific due diligence and monitoring steps they need to undertake. These steps may be more time-intensive than for other charities.

When working internationally, charities often operate through local partners rather than establishing their own delivery infrastructure in their country or region of operation. Working through or with a local partner can be an effective way of delivering significant benefits direct to a local community. It does not, however, shift or alleviate responsibility for ensuring the proper application of the charity's funds by the local partner. That responsibility always remains with the charity trustees, forming part of their duties and responsibilities under charity law. The need to implement risk strategies therefore remains critical.

Application of charitable funds and financial controls

It is the fundamental duty of all charity trustees 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 there are adequate internal financial and administrative controls over the charity's assets and their use. Therefore, in order to show that they are complying with their legal duties, trustees must keep records and an adequate audit trail to show that the charity's money has been properly spent on furthering the charity's purposes for the benefit of the public.

Charity trustees must exercise sufficient control over their charity's financial affairs both in the UK and internationally. As an absolute minimum, they must keep proper and adequate financial records for both the receipt and use of funds and audit trails of decisions. Records of both domestic and international transactions must be sufficiently detailed to show that funds have been spent properly and in a manner consistent with the purpose and objectives of the organisation.

In addition, there may be tax consequences for failure to properly monitor overseas spend. The Finance Act 2010 states that charities' expenditure overseas could be considered non-charitable and therefore liable for tax if organisations do not take the steps HMRC considers are reasonable to ensure that the funds were used for charitable purposes. Charities must provide evidence that reasonable steps have been taken to establish that donations to offshore recipients would be, and have been spent charitably to the satisfaction of an officer of HMRC. If a charity cannot provide evidence that it took the necessary steps, the expenditure may be deemed non-charitable and tax exemptions would be restricted accordingly.

Trustees carry ultimate responsibility for the management of their charities. Ensuring there are sound financial controls in place and implemented is a crucial part of trustees' duties. Such systems help prevent financial crime, ensure the charity is reporting accurately to the public and help protect the charity's reputation. It is a fundamental duty of all charity trustees 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.

Working in partnership

When choosing local partners to work with, trustees must conduct adequate due diligence checks to ensure that:

i. the activities they intend to carry out through their local partners are in furtherance of their charity's purposes

ii. their partners are and continue to be appropriate for the charity to work with

iii. the trustees have taken reasonable steps to monitor the use of funds to make sure that:

    a. their partners can and will apply their funds for proper charitable purposes

    b. the funds reach their partners and end beneficiaries

Trustees should put agreements between their charity and its partner organisations in writing, and specify the funds being made available, the timeframe for delivery of the project and measures of success. The agreement should set out clear requirements for reporting to the charity on progress and financial expenditure. The requirements set out in the agreement should address any risks specific to the region the local partner works in. This is important as it will help both parties understand their relationship and what they can expect from each other.

Further information and regulatory advice and guidance on these subjects is available on the commission's website under **Internal financial controls for charities (CC8)** and chapter 2 of the toolkit (**protecting charities from harm**) and HMRC's **website**.