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CHARITY COMMISSION
FOR ENGLAND AND WALES

Inquiry Report **Africa Relief Trust (ART)**

Former Registered Charity Number 1077946

A statement of the results of an inquiry into Africa Relief Trust (former registered charity number 1077946).

Published on 22 March 2017.

The charity

Africa Relief Trust ('the charity') was registered on the register of charities for England and Wales on 26 October 1999. It was removed from the register on 30 September 2015 when it dissolved. The charity was an unincorporated body and governed by a declaration of trust dated 1 December 1998 ('the governing document').

The charity's objects were to relieve poverty, to advance education and training for employment and to relieve sickness and preserve and protect health by the provision of health care services. The charity reported that it provided villages in Uganda with boreholes to prevent illness and death from water-borne diseases when water sources dried up.

Issues under investigation

Before opening the statutory inquiry ('the inquiry') under section 46 of the Charities Act 2011 ('the act') the Charity Commission ('the Commission') conducted a regulatory compliance case ('the investigation') into the charity, which was opened on 27 October 2011.

The case was opened following receipt of information from a local authority that the, apparently dormant, charity had entered into a tenancy agreement to occupy a large commercial property.

At around this time in 2011 the Commission issued an **alert to charities** explaining the potential risks for the charities involved in entering into arrangements with landlords to occupy commercial property where in practice the property will be empty, including the risk that these charities may find themselves involved in what local authorities might consider to be business rates avoidance by landlords that could potentially result in charities losing the discretionary discount and becoming liable to full business rates.

The charity's income and expenditure

Financial year	Income	Expenditure
2007 to 2008	£1087	£820
2008 to 2009	£100	£90
2009 to 2010	Nil	Nil
2010 to 2011	£1154	£1150
2011 to 2012	£4232	£4231
2012 to 2013	£52115	£51700
2013 to 2014	£23916	£23900

Background

Under the Local Government Finance Act 1988, charities are entitled to 80% mandatory business rates relief, provided the property is used 'wholly or mainly' for charitable purposes. Local authorities have a discretion to increase this to 100% relief.

If a commercial property is empty the landlord has to pay the business rates. Therefore if a previously empty property is used wholly or mainly for charitable purposes the landlord will not be liable for the business rates. If a charity is offered the tenancy and can claim rate relief, it can occupy the premises at very low or no cost. However it is not sufficient for the charity to have entered into an agreement to occupy the premises, it must actually use them wholly or mainly for charitable purposes in order to be able to claim business rate relief.

There are significant risks for charities in terms of financial liability as well as not complying with charity law duties if they do not follow proper and reasonable decision making processes before entering into these kind of tenancy agreements, and if they are not physically occupying the premises. Charities may find themselves involved in what local authorities might consider to be business rates avoidance by landlords and potentially result in the charities themselves losing the discretionary discount and becoming liable to full business rates.

Before entering into these kind of arrangements and tenancy agreements to occupy empty properties, charity trustees need to:

- be assured that the tenancy agreement is for the exclusive benefit of the charity, will further the charity's purposes and is in its best interests
- ensure the property is genuinely required and is fit for purpose
- consider the potential liability of the charity to pay outstanding rates if the local authority disputes occupation and refuses discretionary rates relief
- very carefully safeguard the charity's independence and ensure the charity is not being abused for the benefit of a commercial company
- where appropriate, take suitable professional advice, including legal advice, before entering into a tenancy agreement

During the investigation into this charity the Commission learned that the charity's application for business rates relief had been rejected and a liability order for over £70,000 had been granted by the magistrates' court.

Information gathered during the investigation suggested the chair of trustees had been contacted by a person who was aware the charity was dormant and offered to help reactivate it by way of an 'empty property scheme' ('the scheme') which he could operate on behalf of the charity through a limited company ('the company').

The company's website reported that it was established in 2010 and offered a UK wide service on behalf of the owners of shops, offices and industrial warehouse properties to reduce the burden of empty property rates. The website advertised 'save up to 100% on Empty Property Rates'. The evidence obtained by the investigation suggested that the scheme worked by the company identifying charities which could occupy empty commercial premises, a tenancy at will was entered into between the charity and the commercial landlord which typically charged the charity a peppercorn rent in exchange for an agreement to vacate the premises with 24 hours' notice. The property could therefore still be marketed for sale or to let.

The Commission established that the chair of trustees authorised the scheme and the charity entered into the lease agreement, as a result of which meant it attracted the liability order when business rate relief was not granted by the council.

In addition, the Commission established that the charity had entered into further lease agreements and as a result, on 12 July 2013, due to the significant risk to the charity's funds, potential for significant damage to public trust and confidence in charity and potential for serious or deliberate abuse or wrongdoing by trustees, the Commission opened a statutory inquiry under s46 Charities Act 2016. This sought to establish:

- whether the trustees were discharging their legal duties and responsibilities as charity trustees
- the risk of potential significant financial loss to the charity
- whether the charity was being used for the benefit of commercial companies

Findings

Whether the trustees were discharging their legal duties and responsibilities as charity trustees

The inquiry established that Clause 10(a) of the governing document stated that 3 trustees were required to form a quorum. In addition Clause 12(d) stated the number of trustees should not be less than 3 and in the event of the number falling below 3, the remaining trustees could only act for the purpose of appointing additional trustees.

The inquiry found that when the chair of trustees authorised the scheme he did not have the power to do so because when he made the decision only 2 trustees were in place.

The inquiry was told that the person who proposed the scheme to the charity subsequently became a trustee ('the new trustee'). The new trustee then managed all of the charity's involvement in the scheme. The inquiry found no evidence that the chair of trustees had any previous involvement in the scheme or commercial company. He confirmed to the inquiry, in interview, that nearly 3 years later he still did not understand how the scheme worked.

The new trustee told the inquiry that he was aware the trustees could be held personally liable for any business rates debts so he had conducted a risk assessment on the scheme. This included taking advice from lawyers and other companies over the telephone. He was unable to provide the inquiry with any evidence of this as he did not believe he obtained any advice in writing. The inquiry found it was imprudent not to take advice in writing on such an important issue of financial liability.

The inquiry did not find evidence that the trustee(s) involved at the time had taken steps to ensure that the scheme and the agreement entered into was for the exclusive benefit of the charity, would further its purposes and was in its best interests. It was not clear they had satisfied themselves that the property was genuinely required for its use and the trustees did not properly consider the potential liability of the charity to pay rates if rates relief was refused.

The inquiry found that the trustees' decisions to enter into the scheme and continue with it were not properly made and was not satisfied that the trustees had discharged their duty to act with reasonable care and skill, particularly as the chair confirmed that he did not truly understand how the scheme worked. In delegating all responsibility to the new trustee for such an important decision involving potentially significant financial liability, the other trustees had not discharged their duty of care to the charity and other trustee duties.

The risk of potential significant financial loss to the charity

The inquiry established that the charity reported in its accounts for the 2012 to 2013 financial year that, after some years of dormancy due to lack of financial resources, there had been donations from the company and other supporters so ART had continued its work in Uganda. The accounts showed income for that year was £52,115 and expenditure was £51,700.

The trustees told the inquiry that the charity received small donations from the company between late 2011 and February 2012, however from October 2012 it received a total donation of about £60,000 from the company and an 'anonymous source'.

The inquiry found that, although the numerous lease arrangements the charity entered into were for a peppercorn rent, they caused significant financial risk to the charity. It was not clear that the charity had properly considered its potential liability to pay outstanding rates if the local authority disputed occupation and refused discretionary rates relief, as they subsequently did. The inquiry discovered that numerous local authorities were pursuing the charity for unpaid business rates, totalling in excess of £800,000. This sum eclipsed the donations the company had made.

The inquiry was provided with a copy of a letter from the company dated 14 February 2011 in which it confirmed that it would pay, as a donation:

- a) 'Any business rate liability payable on property where Africa Relief Trust is a tenant and the property was introduced to Africa Relief Trust (ART) by the company.'
- b) 'All Africa Relief Trusts (ART) legal expenses in defence of any rate liability claim by local authorities that Africa Relief Trust (ART) believe challenges the statutory rights of a registered charities entitlement to property rate relief granted under The local Government Finance Act 1988 or The Rating (Empty Properties) Act 2007.'

However the inquiry was told by the chair of trustees that he did not know whether the letter was legally binding. The charity's legal representative told the inquiry that the company would pay any business rates that were properly owed by the charity, however he suggested it had never been determined by a court whether the charity was or was not entitled to business rates relief.

The inquiry's view was that when the risk increased due to the liability orders being granted, prudent trustees would have taken independent professional advice or awaited a court ruling to determine if their interpretation of the law was correct before committing to any further potential liability. However, the inquiry established that the charity continued to take on leases and challenged liability orders only on technical grounds, for example, on the basis that they were not received or were improperly served.

The inquiry found that this was evidence of the trustees not discharging their fiduciary duties, as ensuring that the company's offer to pay the charity's costs was legally enforceable or taking independent legal advice would have significantly mitigated the risk to the charity's funds and its financial position.

When liability orders were granted by the Magistrates Court, this exposed the charity to liability for full business rates.

On 23 September 2015 the trustees told the inquiry they had closed the charity and confirmed there were no longer any tenancy agreements in its name.

Whether the charity was being used for the benefit of commercial companies

The inquiry found evidence which strongly indicated that the company and landlords involved would financially benefit from the charity taking the leases. The inquiry established that the company was offering a service on behalf of the owners of commercial properties to reduce the burden of empty property business rates through the provision of charity tenants. Landlords benefitted financially from the arrangements because they were no longer liable to pay full business rates.

The charity should not have agreed to enter into the scheme in return for or even in light of a promise in which charitable donations would be made by the company to the charity. The possible link between the donations and the charity taking on the risk questions whether the purpose of entering into the scheme was actually for the benefit of the landlord or company and any benefit offered to the charity was incidental. If the donations were intended to minimise the risk to the charity, they failed to do so as they were not adequate to cover the financial risk.

The inquiry was also concerned that the person who proposed the empty property scheme to the charity and became a trustee of the charity also became a shareholder in the company.

The inquiry found that permitting the charity to become involved in the scheme and then failing to take effective action when liability orders were made was mismanagement in the administration of the charity.

Conclusions

The Commission concluded that:

- the trustees mismanaged the charity because they did not undertake appropriate due diligence when the scheme was implemented
- the charity had not shown that taking part in the scheme or entering into the tenancy agreements were for the exclusive benefit of the charity, and would further the charity's purposes
- the trustees [both in 2011 and 2013] failed to properly consider and manage the risks including the liability of the charity to pay outstanding rates if the local authority disputed and refused rates relief
- the trustees did not carefully safeguard the charity's independence and ensure the charity is not being abused for the benefit of a commercial company or landlords
- it was not satisfied that the charity had adequately protected itself and taken adequate professional advice at the time before entering into the arrangements
- subsequent decisions, made by the new trustee were conflicted due to his position with the company and, were based on an unproven interpretation of the law

The Commission concluded that the entering into the scheme was not in the best interest of the charity and continuing to take on additional leases before the legal position was firmly established was a further breach of the trustees' duty of care to the charity.

Although prior to entering into the scheme the charity had little income, the liability arising from the scheme was the main contributing factor to the closure of the charity and has prevented it from providing any future support to its beneficiaries.

In view of these serious mismanagement issues the Commission is considering the fitness of individuals involved in this case to be trustees and the use of its powers under section 10 of the Charities (Protection and Social Investment) Act 2016 to disqualify the individuals from holding future trustee appointments.

Regulatory action taken

The inquiry issued an order under section 52 of the act, which required the charity's bank to provide copies of its bank statements.

The inquiry issued a direction under section 47 of the act, which required the trustees to provide details of properties occupied by the charity.

The trustees were required to confirm that from 20 September 2013 they would not enter into any further lease agreements or renew any existing agreements without the prior written consent of the Commission.

The inquiry issued a direction under section 47 of the act, which required the charity to meet in person with the inquiry to give evidence about matters including the administration, governance and management of the charity and to establish whether the trustees knowingly entered into the arrangements for the purpose of non-payment of business rates.

The inquiry issued a direction under section 47 of the act, which required the new trustee to provide information outstanding from the requirement in the earlier direction.

The inquiry issued an order under section 52 of the act, which required the charity's bank to provide additional copies of bank statements.

The inquiry issued an order under section 52 of the act, which required the charity's bank to provide further copies of bank statements and to confirm if the charity's account was still open.

The inquiry issued a direction under section 47 of the act, which required the trustees to provide a copy of the minutes from the trustee meeting where the decision was made to close the charity along with a copy of the charity's final accounts, details of any ongoing tenancy agreements and confirmation that it no longer conducted any activities.

The inquiry issued an order under section 52 of the act, which required the charity's bank to provide copies of final bank statements and to confirm whether the account was still open.

Two alerts, one in 2011 and one in 2013, were issued to warn other charities of the risks attached to entering into business rates relief arrangements.

Issues for the wider sector

The Commission is not responsible for enforcing compliance with business rates obligations or for recovering outstanding business rates debts. However there are significant risks for charities and trustees that are approached by retailers or their intermediaries or landlords of hard to let property to enter into tenancy agreements that would relieve the landlords of the requirement to pay full business rates. If the charity is not making sufficient and proper use of the premises for charitable purposes which would attract the business rate relief, then it may be liable for the full business rate liability.

Trustees must exercise their duty of care and taking proper decisions, and not allow the good name of charity to be abused for the benefit of commercial companies. Charities are held in high esteem by the general public, and trustees must ensure they do not enter into agreements that could jeopardise that public trust.

Before entering into any tenancy agreements to occupy empty properties, charity trustees must:

- be assured that the tenancy agreement is for the exclusive benefit of the charity, will further the charity's purposes and is in its best interests
- ensure the property is genuinely required and is fit for purpose
- consider the potential liability of the charity to pay outstanding rates if the local authority disputes use of the premises and refuses rates relief
- very carefully safeguard the charity's independence and ensure the charity is not being abused for the benefit of a commercial company
- where appropriate, take suitable professional advice, including legal advice, before entering into a tenancy agreement

If landlords are perceived to disproportionately benefit from entering into arrangements with charities, this creates a perception that the real purpose is to benefit commercial companies and has the potential to impact on public trust and confidence in the charity concerned and more widely.

Trustees should ensure they maintain a position of accountability and transparency through the implementation of proper governance and regularly review policies and procedures to ensure they are fit for purpose.

The Commission recognises that, on occasions it is possible for the activities of a charity to drift from being exclusively charitable and for the public benefit. However trustees should ensure they implement safeguards such as risk assessments and regular reviews of the activities undertaken against the objects of the charity to ensure activities are compatible with those objects and do not expose the charity to unmanaged risks.

Further information about charitable purposes and public benefit can be found in the Commission's guidance **Charitable purposes and public benefit**, which is available on GOV.UK.

Guidance on trustee responsibilities can be found on **GOV.UK**.

The Commission published an article in its **July 2016 newsletter** highlighting the issues surrounding charities and business rate relief which may be of interest to trustees, available on GOV.UK.