



Case Report

Earl of Chester's Fund (1119422)

About the charity

The charity was registered in 2007 for any charitable purpose (other than the advancement of religion) within the county of Cheshire or for the benefit of persons residing in the county. The charity operates as a grant making trust.

Why the Charity Commission got involved

The Charity Commission received a complaint in January 2015 that the charity had awarded a grant of £24,000 to a non-charitable company which was linked to a trustee. A media article stated the grant was towards set up and development costs of the new company which produces giant figurines. Although charities can fund non-charitable organisations they must only fund activities that further their charitable purposes. Therefore the Commission needed to look further at the concerns raised.

The action we took

We opened a compliance case and contacted the trustees to gather further information about the charity's governance arrangements. This included:

- requesting minutes of meetings to demonstrate how the trustees made decisions
- establishing whether the charity's grant to the non-charitable company funded activities that were within and in furtherance of the purposes of the charity
- establishing whether the trustees had complied with their legal duties and responsibilities; in particular, when awarding funding whether (i) due diligence was carried out by the trustees on the non-charitable company and (ii) there was a process to monitor the end use of funds received by the non-charitable company

What we found

A trustee made a personal donation to the charity and subsequently proposed a grant of £24,000 was made to his non-charitable company.

Although the trustees explained to the Commission that they had detailed knowledge of the non-charitable company they were not able to demonstrate to the Commission they had considered the making of the grant in detail. Minutes of meetings contained no record of the trustees considering what charitable purpose the grant would be used for, how any charitable restriction would be communicated to the non-charitable company or if the trustees would monitor its use.

The trustees explained that the non-charitable company provided support for the long term unemployed and ex-offenders through the provision of employment opportunities. However the Commission considered that as there was no restriction on the grant it therefore was not made specifically in furtherance of the charity's objects. As the organisation provided private benefit the grant was also in breach of trust because the charity's governing document restricted trustee benefits. The trustees had not sought permission from the Commission or the courts.

The trustees also failed to identify and manage conflicts of interest and were in breach of trust where the governing document required trustees to absent themselves from discussions where a conflict of interest arises.

The trustees held one meeting a year and discussed some grants on an ad hoc basis via email. Face to face impromptu meetings were also held when a charitable request was submitted which were not always attended by all the trustees. The Commission found that the trustees were not acting in accordance with their governing document that required at least 2 meetings each year, including one involving physical presence and another where the trustees could both see and hear each other.

The trustees co-operated fully with the Commission's enquiries; they were of the view that there had been no deliberate wrongdoing but were willing to take on board any feedback or advice.

Impact of our involvement

As a result of our case we were able to ensure that, with improved trustee governance, charitable funds were safeguarded and could be properly applied for charitable purposes. The trustees in this case accepted the grant was made in error and made restitution of £24,000 to the charity as an act of good faith.

It is important that trustees are aware of their responsibilities as trustees and maintain proper oversight of grants made by the charity. The trustees have implemented a decision making document for all future grants to ensure due diligence.

Our case ensured that the trustees were aware of their duties and responsibilities as trustees and we were able to give regulatory advice to improve the governance of the charity. The trustees co-operated fully with the Commission and as a result the internal governance of the charity has been improved through regular trustee meetings and better quality minutes/record keeping.

Lessons for other trustees

1. Make sure that your charity is carrying out the purposes for which it is set up, and no other purpose

Trustees have a legal duty to ensure that they only apply charity property for the charitable purposes set out in their charity's governing document. Trustees must ensure that this is the case in particular if giving grants to non-charitable bodies, and that any private benefits are legitimately incidental to carrying out their charity's purpose.

Our guidance **The essential trustee (CC3)** outlines the duties of trustees.

2. Comply with your charity's governing document

Trustees should ensure that they follow their charity's governing document. In addition to the purposes for which you can use the charity's resources it is likely to contain provisions about how trustees are appointed, how meetings must be conducted, conflicts of interest and trustee benefits.

If you don't have a copy of your charity's governing document, ask your co-trustees or contact the Commission.

3. Act in your charity's best interests and deal appropriately with conflicts of interest

Trustees must only act in the best interest of their charity. Payments or other transactions that benefit trustees, or individuals or companies connected to a trustee, can only be made if expressly permitted by the governing document or charity law. Otherwise they will need the permission of the Commission.

Find out more:

- **Manage a conflict of interest in your charity**
- **Trustee expenses and payments (CC11)**

4. Make balanced and adequately informed decisions in the interests of the charity

As part of their duty to act in their charity's best interests, trustees must ensure that they make decisions collectively, in good faith, informed by all the relevant facts and are not swayed by any irrelevant facts. Their decision making must not be impacted by a conflict of interest; trustees who are conflicted should not take part in the decision.

Our guidance **It's your decision: charity trustees and decision making (CC27)** sets out the requirements in this area.

5. Grant makers must carry out appropriate due diligence and monitoring

Where the trustees consider that making a grant, particularly to a non-charitable organisation, is in the best interest of the charity they must supervise the grant and take reasonable steps to ensure that it is only applied for their charity's purposes.

Our **draft guidance on grant making to non-charitable organisations** provides more details.

6. Restitution

Where trustees act in breach of their duties, as well as impacting on the charity it may have consequences for them personally. In some cases these can include financial consequences.

The trustees in this case decided to repay funds to the charity. It is for trustees to decide whether to recover charity property. The Commission will pursue restitution where trustees are unable or unwilling to do so, and the amount involved is significant.

Decisions to pursue restitution will be made in line with the **Commission's published policy**.