

Delapage Limited

Registered Charity No: 276017

Introduction

1. This is the statement of the results of an Inquiry under section 8 of the Charities Act 1993.
2. Delapage Limited ("the Charity") was registered as a charity in 1978. Its objects are, "to advance religion in accordance with the Orthodox Jewish Faith and for such other purposes as are recognised by English Law as charitable". Its income in the financial year ending 31st March 2002 was £5,063,318 and it is based in London.

Issues

3. The Commission's monitoring system identified that this Charity had persistently failed to submit its accounts on time. The trustees did not respond to the Commission's initial attempts to contact the Charity and obtain the overdue accounts.
4. An Inquiry was opened on 17th March 2003 with the aim of obtaining up to date accounts, and establishing whether there were any underlying problems that had prevented the trustees from fulfilling their statutory duty to submit accounts and other information to the Commission.

Findings

5. The trustees supplied the Charity's accounts for the financial years ending 1999, 2000, 2001 and 2002. Scrutiny of these accounts revealed that the 2002 accounts were not compliant with the Charities SORP (Statement of Recommended Practice). These accounts also raised concerns about loans to the value of £28,671,900 that the charity had made in the financial year ending March 2002.
6. The Commission met and engaged in lengthy correspondence with the trustees in an attempt to obtain information relating to the loans the Charity had made. The loans were made to nine private companies, all of which are owned by a company of which two of the Charity's trustees are directors.
7. This connection raised issues of conflict of interest in the decision-making process when the Charity made the loans and raised concerns about the lack of independent trustees on the trustee body capable of making a decision whether it was in the Charity's best interests to engage in a contract with a connected party. In addition, there were only three trustees and the Charity's governing document specifies that there should be five. The three trustees contended that they had passed a resolution to reduce the number of trustees required to transact the Charity's business from five to three. The Commission found that this resolution was not valid because it had not been passed at a properly called Extraordinary General Meeting.

8. The loans were incorrectly classified in the Charity's accounts as "Unlisted investments". More information should have been provided about these loans in the notes to the accounts under a disclosure about related party transactions.

9. The trustees stated that the Charity benefited from the loans it made to the connected companies because it obtained a higher rate of interest on these loans than it would have earned if invested elsewhere. They also stated that the two trustees who were the company's directors did not benefit personally from these loans because the private companies could have borrowed funds more cheaply from commercial lenders.

10. Proper minutes were not kept of trustee meetings and decisions were not always properly recorded.

Outcome of the Inquiry

11. The Commission advised the trustees that while there may be a financial advantage to the Charity in earning a higher rate of interest than is available if invested elsewhere, this arrangement also benefited the companies receiving the loans. The Commission explained that the loans to the connected companies raised conflict of interest and self-dealing issues and put the Charity's reputation at risk.

12. The trustees confirmed their commitment to record their decisions and properly minute their meetings, ensuring there is a proper record of their deliberations and an explanation of the reasons behind their decisions.

13. On 3 August 2005 the Inquiry was closed on the basis that the trustees addressed the Commission's outstanding concerns. The Commission advised the trustees to submit the charity's accounts for 2003 and 2004, and to give consideration to the current relatively low level of expenditure on the charity's aims.

14. The trustee body is currently inquorate and therefore the trustees cannot take a valid decision to appoint additional trustees. The Commission has advised the trustees to give their immediate attention to identifying suitable new trustees. Once they have identified prospective trustees they will approach the Commission with a view to having these individuals appointed, by Order of the Commission, under section 18 (5) (b) of the Charities Act 1993. This power is used "where there are no charity trustees, or where by reason of vacancies in their number or the absence or incapacity of any of their number the charity cannot apply for the appointment".

15. The Commission will monitor the Charity's progress in addressing the areas of concern in three months.

Wider Lessons

16. It is an established principle that a charity trustee shall not enter into engagements in which he has or can have a personal interest. Conflicts of interest that have not been handled appropriately may result in voidable transactions. If a conflict of interest is recognised, it may be appropriate to seek the authority of the Commission to proceed under section 26 of the Charities Act 1993.

17. Decisions about agreements between a charity and a connected party must be made by trustees who are independent of the parties in question. There must be sufficient trustees in place so that, if the conflicted trustees withdraw, there are still enough trustees to make a quorate decision.

18. Trustees should consider carefully all financial arrangements. Their reasoning and decision should be properly recorded in the charity's records.