

Kensington House Trust

Registered Charity Number 1044235

Introduction

1. This report is the statement of the results of an inquiry conducted under section 8 of the Charities Act 1993.

2. Kensington House Trust (KHT) was registered as a charitable company on 16 February 1995.

3. Operating in Lancashire, its objects are to provide temporary accommodation, holidays, furniture, respite and refuge for those in need, hardship or distress. Its total incoming resources for the financial year end 31/1/04 was approximately £470,000.

Issues

4. Analysis of KHT's Annual Return (AR2001) by the Commission found that it failed a number of triggers, principally involving issues of trustee remuneration and reserves policies.

5. Further evaluation of these concerns revealed KHT's close relationship to a family run foundation trust ("the family trust") that had itself triggered further concerns with the Commission. The relationship between the two involved a duality of trustees, funding and trustee benefits.

6. An inquiry was opened in September 2003, with the main issues noted as conflicts of interest and payments to trustees.

Findings

7. KHT operates from 3 premises: a homeless hostel that also houses a charity shop; a purpose built apartment block to provide refuge and respite holidays; and a resource centre from where the crisis grant helpline and many of the other activities are administered. Apart from the revenue generated by housing benefit payments from the local authority for housing homeless young people, KHT relies almost entirely on the family trust for its incoming resources.

8. In October 2003, the Inquiry Officer visited KHT's premises and found them all to be of very high quality. The Inquiry Officer also spoke to a number of staff and was impressed by their level of knowledge and expertise. Publicity material, leaflets and internal procedural packs were informative and well produced.

9. The Inquiry Officer eventually met the trustees in April 2004, along with their instructed legal advisor, when the main issues of the inquiry were discussed

10. KHT's governing document expressly prohibits any trustee remuneration or benefits. Yet, 2 of the 5 trustees were also paid employees of KHT and had been for a number of years. They claimed that they were unaware that they were trustees yet had clearly signed the registration documents as such and were noted as trustees in the Trustees' Annual Reports. Later, another of the 5 trustees also became a paid employee. There were no fair and open recruitment and selection exercises for any of these positions. This is contrary to best practice. The trustees concerned acted in breach of trust by charging for their services and keeping the money without authority from the governing document, the Court or the Commissioners.

11. Another trustee received remuneration for professional accountancy services provided to KHT. The trustees could provide no evidence of how they ensured that the accountancy services they had received were competitively priced or represented value for money. Again, the trustees had acted in breach of trust.

12. There are 5 trustees of KHT and the quorum for decision making purposes is 3. [REDACTED]

[REDACTED] Apart from acting contrary to best practice in making the appointments, the decisions to appoint those 2 particular trustees were clearly conflicted. (But if those trustees who had an interest in the decisions to appoint these 2 particular trustees had absented themselves, then the trustee body would have been inquorate and the decision possibly invalid.) The trustees, at no time, took any steps to manage these conflicts of interest.

13. Of the 3 properties that KHT occupies, it owns 1 (a gift from the family trust). The remaining 2 properties are both owned by the family trust but are occupied by KHT free of charge. There is a lease in place for only 1 of these 2 properties, but it is terminable with one month's notice from either party. The Inquiry Officer advised that the property arrangements, when considered in conjunction with the fact that KHT relies heavily on the family trust for its funding, leaves KHT exposed and vulnerable, as regards its future. If any problems beset the family trust or developed between the family trust and KHT, then KHT's future would be significantly at risk.

14. There were important omissions from KHT's accounts that meant that they did not fully comply with SoRP (Statement of Recommended Practice that outlines the requirements whereby charities report annually on the resources entrusted to it and the activities it undertakes). Some examples are:

- KHT did not record as intangible income the accommodation that it occupied free of charge;
- KHT did not record all related party transactions, such as the accountancy fees paid to a trustee's firm;

- The financial statements did not include any risk statement and the trustees confirmed that no formal risk policy is in place;
- There were no explanatory notes to explain transfers between funds.

15. A parallel section 8 inquiry was being conducted into the family trust at the same time as this one and a books and records inspection there in September 2004 revealed that:

- No analysis of the grant amount paid to KHT in 2000 was evident in the family trust current or deposit accounts;
- In 1999, there was a transfer of £25,000 from the family trust to KHT but it was unclear how the remainder of any grant monies was transferred;
- In 1999, there was evidence of cheque payments made by the family trust on invoices that were clearly meant for KHT.

16. A trustee of both the family trust and KHT, owns a company called [REDACTED]. [REDACTED] employs the services of a [REDACTED]. [REDACTED] is responsible for the administrative function of the family trust and also holds and manages the books and records of KHT and offers them a free bookkeeping service. The Inquiry Officer, mindful of the other unmanaged conflicts of interest in this case, expressed [REDACTED] concerns about how the trustees of KHT could exercise control over this third party, given [REDACTED] employment and contractual obligations to the trustee in [REDACTED] capacity as owner of [REDACTED]. The Inquiry Officer also expressed concern about how [REDACTED] could sufficiently segregate the duties and manage any conflicts of interest between [REDACTED] employment with [REDACTED] managing the administration of the family trust and the books and records of KHT.

Outcome of the Inquiry

17. Those trustees who held employed positions with KHT each resigned their trusteeships. They each subsequently sought and received formal authorisation from the Commission for their continued employment. At least one other trustee has been recruited so that the trustee body remains quorate for decision making purposes. Despite a clear breach of the governing document in this matter, the Commission decided not to seek restitution for payments made to these trustees prior to their authorised employment on the basis that the salaries paid were not excessive in relation to the type of work carried out and the jobs were not perceived to have been created or tailored to suit the needs of the trustees concerned. It was also felt that the trustees had the appropriate knowledge and skills for the job.

18. Despite the Commission's concerns about unmanaged conflicts of interest being somewhat allayed by the resignation of those 3 trustees who were employees of KHT, it was still felt that, in order for KHT to operate completely effectively, new and independent trustees should be appointed to the trustee body. The trustees agreed this course of action and were given specific advice and guidance by the Inquiry Officer on how to proceed in this matter. It was recognised that closure of the inquiry may facilitate a trustee recruitment process.

19. The trustees of KHI wished to retain the accountancy services of the firm in which one of the trustees is a senior partner. The trustees will work with the Commission to attain authorisation (whether by order or appropriately amending the governing document) so that the accountant can be paid for his work for the charity.

20. The Commission gave advice and guidance to the trustees about the leasing arrangements between KHT and the family trust and the risks that these present to KHT's future. The trustees agreed to seek further independent legal advice. While the Commission notes that the leasing arrangements do not offer much security to KHT, it was recognised that the beneficiaries are probably more secure than if the leasing arrangements were with an unrelated organisation. However, the trustees, in seeking legal advice, must consider the balance of the lack of security of tenure with the current arrangement and the liabilities that may be placed on KHT by any formal lease.

21. Notwithstanding the appointment of new trustees, it was also agreed that there needed to be more segregation between the family trust and KHT. The Inquiry Officer advised on ways to achieve this. For example, the trustees gave their reassurances and commitment to:

- ensure that all staff are aware that the two charities, in terms of charitable status, legal obligations and the relevant Financial Reporting Standards, are separate and distinct entities;
- seek independent advice on the role of the [REDACTED] in terms of [REDACTED] duties and responsibilities for both the family trust and KHT.

22. A number of accountancy concerns were raised during the inquiry, many of which were dealt with to the satisfaction of the Commission by explanation from the trustees or advice from the Commission on how to improve systems and reporting standards. However, the trustees also gave reassurances and commitment to, for example:

- strengthen internal financial controls and make them more transparent;
- ensure that all staff are aware of where to allocate expenditure and costs;
- ensure that all invoices are clearly explained;
- ensure that expenditure and income is clearly shown in the relevant books and records and that there is no crossover between KHT and the family trust;
- ensure that KHT's financial statements comply fully with SoRP, particularly in respect of intangible income and related party transactions.

23. The inquiry revealed that KHT relies heavily on the family trust for funding and free use of accommodation. The Commission advised that KHT is exposed to major risk here should there be a parting between the family trust and the charity and the trustees should establish risk statements, policies and systems to mitigate this and other risks so as to avoid any barriers to KHT achieving its objects and maintaining its reputation.

24. The inquiry was closed in April 2005. Although the Inquiry Officer was reassured by the willingness and efforts of the trustees to act on the advice and guidance of the Commission to help regularise the administration and management of KHT, it was felt that a follow-up case be undertaken by the Commission to look specifically at:

- how the trustees had achieved adequate administrative and management segregation from the family trust;
- how they had strengthened internal financial controls;
- evidence of the independent advice taken in respect of the property arrangements and role of the [REDACTED];
- resolution of the issue of professional charging and its preclusion from the governing document;
- evidence that all deliberations and decisions at trustee meetings are properly recorded;
- evidence of efforts to recruit new, independent trustees in accordance with best practice.

Wider Lessons

25. A charity is entitled to the objective judgment of its trustees, exercised solely in the interests of the charity and unaffected by the prospect of any personal advantage to themselves. The law requires charity trustees not to place themselves in a position where their duty to the charity might conflict with their own interests, that is, where they may have an incentive to neglect their duties as trustees. Moreover, a charity trustee is not permitted to profit from that position (unless he or she is expressly authorised to do so). The following Commission publications are useful guidance:

- CC3 – The Essential Trustee: what you need to know;
- CC3a – Responsibilities of Charity Trustees (a summary);
- CC11 – Payment of Charity Trustees.

26. A trustee who benefits from a position of trust without the necessary authority may be liable to repay the benefit which he or she has received. If the Commission decides not to pursue repayment to the charity of sums lost because of a breach of trust, that decision does not eliminate any legal liability to repay. Nor does it bind the present or future trustees of the charity, or the Attorney-General.

27. It is the fundamental duty of all charity trustees to protect the property of their charity and to ensure that it is used to further 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. The Commission's publications, CC8 – Internal Financial Controls for Charities and CC60 – Hallmarks of an Effective Charity are useful guidance here.

28. Those acting in the administration of a charity should be familiar with the terms of its governing document and ensure that its terms are complied with.