The McLaren Foundation

Registered Charity No 240425

Introduction

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

2. The McLaren Foundation, which is governed by a trust deed, was registered on 17 June 1965. It has general charitable objects and was established in Wiltshire.

3. The accounts of the charity were unreliable, and its annual income variable. Typically, however, approximately £20,000 - £30,000 was distributed annually by way of small donations to a wide range of beneficiaries.

Issues

4. The Commission received a complaint about the financial practices of the charity, and was concerned by conflicting information in the annual accounts.

5. Following an evaluation of these concerns, the Commission opened an inquiry on 23 February 1994 to investigate the following apparent issues:

- Lack of financial & administrative records
- Lack of trustees' involvement
- Intermingling of charity and family affairs
- Lack of charity bank account
- Lack of co-operation from the Founder, who was also a trustee from time to time, and the other trustees.

Findings

6. The complexity of the assets of the charity, and the lack of both proper records and of the necessary co-operation from the founder made this an unusual and complex case. These factors, together with the difficulties faced by the Interim Manager appointed by the Commission in recovering property of the charity which had been transferred overseas, meant that the inquiry process was unusually protracted.

7. From its inception the charity had been administered almost exclusively by its Founder. He had taken sole responsibility for managing its investments, retained all books and records in his personal possession and prepared and audited the accounts. Although he had originally been a trustee, he acted as administrator in accordance with a power contained in the original trusts.

8. The charity was established with a small initial endowment from the Founder [redacted] and, to a large extent, income had been accumulated and reinvested. The charity had built up a substantial portfolio of shares and property, the precise value of which was not stated in the accounts, but was at least £2 million in total.

9. The charity had no separate bank account, and all dividends and interest had been paid into a client account controlled by the Founder, which, he explained, was to achieve a higher interest rate.

10. There were no formal trustee meetings, and the trustees' role was limited to approving accounts and the actions of the Founder, who acted in an unpaid capacity as the charity's manager. On their own admission, the trustees had not taken an active part in the administration of the charity, did not have its books and records under their control and had exercised no supervision or control over the Founder.

11. During the inquiry, the Founder claimed that a large proportion of the charity's assets including cash, stocks and shares and real estate had been purportedly transferred by deeds of gift to Australia, where an organisation with similar objects to the McLaren Foundation, known as the Aberbaldie Foundation, had been established by the Founder. The Australian authorities were unable to confirm the status of the Aberbaldie Foundation, which declined to provide information as to the usage of the assets.

12. The Aberbaldie Foundation did confirm that it had received £750,000 by way of cash transfers from the McLaren Foundation.

13. The accounts of the charity had failed properly to identify its permanent endowment. No power existed in the trust deed or elsewhere to transfer permanent endowment.

14. The Founder subsequently produced to the Commission a number of deeds which purported to be deeds of amendment intended to allow the transfer of permanent endowment. They had not been previously submitted to the Commission.

15. As far as the transfer of shares was concerned, in the absence of stock transfer forms, there had been no effective transfer. In the absence of an Order of the Commission under Section 36 of the Charities Act 1993, the deeds of gift of land were also ineffective.

16. The deeds also contained a number of alterations and amendments which forensic evidence demonstrated had not been made at the time of the execution of the deeds and therefore cast doubt upon their validity.

17. During the inquiry, the Commission served an Order requiring the production of the books and records of the charity. The trustees were unable to obtain these from the Founder or to gain control over the administration of the charity.

18. Throughout the course of the Inquiry, the Founder failed to supply evidence or documentation to support the accounts he had audited.

19. The Founder supplied misleading, sometimes inaccurate and contradictory information to the Commission.

Outcome of the Inquiry

20. The Commission had initially expected that the founder would co-operate with the Inquiry. However, after both using a consensual approach and then formal information gathering powers it became clear that there was no alternative to appointing an Interim Manager to administer the charity and to recover its assets.

21. The Commission concluded that there had been mismanagement and that charity property had been put at risk and, with the full agreement of the trustees, appointed an Interim Manager on 20 September 2000 to:

- Identify and establish title to the charity's assets;
- Recover those assets where there was a reasonable chance of doing so;
- Ensure that the charity received all appropriate income;
- Recommend future plans for the charity to the Commission and execute them following agreement.

22. The Founder gave notice that he would contest the appointment of the Interim Manager in court and declined to discuss the charity's assets.

23. The Interim Manager commenced legal proceedings to recover the charity's assets.

24. Before the court cases could be heard, the Founder died.

25. The Interim Manager was able to recover records relating to the charity's assets and undertook the lengthy task of tracing the proceeds and income of all stocks and shares. During the course of [redacted] appointment, the Interim Manager established:

- That the majority of shares and investments had purportedly been transferred to the Aberbaldie Foundation by deed of gift;
- That the funds realised from the sale of these shares and dividends had been banked into the client account controlled by the Founder.

This investigation by the Interim Manager, and the subsequent recovery, was a lengthy and complicated process. This was as a result of a failure to separate property and segregate the affairs of the McLaren Foundation from other activities, both in the UK and abroad, controlled by the Founder. The trustees and their professional advisors provided assistance in this.

26. The trustees agreed that the deeds of gift for land and investments were invalid and that these assets had not been transferred to the Aberbaldie Foundation.

27. As a result of the extensive exercise to trace assets belonging to the charity and separate these from the other assets controlled by the Founder, the Interim Manager recovered assets to the value of £2,686,000. The fees paid to Interim Manager by the charity were £226,239 plus £4,433 in disbursements, or 8.6% of the recovery value. In addition the Interim Manager authorized £112,922 in external professional costs. This figure is made up of £85,466 for legal, accountancy and forensic examination services; £21,000 for property insurance; and £6,456 in respect of indemnity insurance.

28. The Interim Manager agreed with the trustees and the Commission that the charity's assets should be distributed to various charities with a bias towards those that had previously been supported by the Foundation. The list of recipients was agreed with the trustees and the Commission prior to distribution. A sum of money was also set aside for local Wiltshire charities. The charity will then be dissolved.

Wider lessons

29. Charity trustees must ensure that financial and administrative records are kept and properly maintained and are not mixed with other non-charitable records. They must ensure that accounts are accurate and timely.

30. Trustees - who are personally liable for their charities - must ensure that all staff, whether volunteers or paid, are properly supervised.

31. Where trustees wish to transfer assets abroad, they must ensure that they have the necessary powers under the charity's governing document to do so, and that the transfer qualifies as being tax exempt under HM Revenue and Customs' regulations.

32. Where assets have been inappropriately transferred from a charity, these transactions may be recovered and the transfers set aside.