

Regulatory Case Report

Multiple Sclerosis Society of Great Britain and Northern Ireland

Registered Charity Number 207495



This is a Regulatory Case Report into The Multiple Sclerosis Society of Great Britain and Northern Ireland ('the Society') published on 7 December 2010.

The Charity Commission ('the Commission') is publishing this Regulatory Case Report about our recent engagement with the Society as it has raised issues regarding delegation and the charity's constitutional arrangements that are of broader interest, particularly for those charities that are operating across the borders of England and Wales, Scotland and Northern Ireland.

The Society

1. The Society registered as a charity with the Commission in 1962. It is an unincorporated association comprising approximately 320 local branches across the UK, 15 Regional Committees of volunteers in England, and National Councils in Scotland, Wales and Northern Ireland.
2. The Society's objects are to support, relieve and encourage people affected by multiple sclerosis to attain their full potential and to promote research into multiple sclerosis and allied conditions.
3. The Society's activities include funding research, providing respite care and offering grants, education and training. In addition it produces publications and runs a freephone specialist helpline (telephone and email).
4. The Society operates in England and Wales, Scotland and Northern Ireland, where different charity legislation applies (it also operates in the Channel Islands and the Isle of Man). The Society's National Councils in Scotland, Wales and Northern Ireland oversee the Society's operations in their respective nations and have established relationships with the national charity, regulators and other relevant authorities. The national operations are known respectively as MS Society Scotland ('MSS Scotland'), MS Society Cymru and MS Society Northern Ireland.
5. The Society's accounts for the financial year ended 31 December 2009 (encompassing all its UK operations) show income of £29.5 million and expenditure of £35.1 million.

Background

6. The Commission was contacted in March 2009 by the Office of the Scottish Charity Regulator (OSCR)¹ which had received a complaint about the Society. There was also significant media coverage in Scotland of the resignation of the Patron of MSS Scotland, J K Rowling. After initial consideration by OSCR, it was agreed that the case related primarily to the actions of the Society so would be passed to the Commission. We received full details of the complaint on 24 June 2009.
7. The complaint raised concerns for the Commission that the Society may not have followed the correct procedures in withdrawing the powers of, and reconstituting, the Scottish National Council ('the Council'). The legal status of the Society's operations in Scotland was unclear and there were differing views as to whether MSS Scotland was in fact an independent charity.

¹ The Society was registered with the Charity Commission (for England & Wales). MSS Scotland was entered on the Scottish Charity Register.

8. The complaint also included reference to a series of internal grievances and complaints (dating back to early 2008) that were made against staff members, members of the Council and members of the Board of Trustees of the Society ('the Trustees').² This is mentioned only to provide background information and to explain the pressure that the relationship between the Council and the Trustees was under.

Issues Examined

9. The Commission's involvement focused on determining if the Trustees had acted outside their powers in withdrawing the powers of, and reconstituting, the Council.
10. We first sought to clarify the status of the operations in Scotland to determine if MSS Scotland was an independent charity.
11. We then examined whether the Trustees had properly withdrawn the powers of the Council in September 2008 and April 2009.
12. Finally we examined whether in December 2008 three additional members (with powers of veto) had been properly appointed to the Council.
13. The Trustees have co-operated with us throughout and submitted all information requested. We have no reason to doubt that, at all times, the Trustees acted in good faith having obtained specialist legal advice. They acted in what they believed to be the best interests of the Society and people affected by MS.

Findings

14. The Commission's findings are as follows:

What is the legal status of MSS Scotland?

15. Having examined the Society's constitution, and the national constitution of MSS Scotland ('the Scottish constitution'), we concluded that MSS Scotland is a constituent part of the Society, not a legally separate organisation, with powers delegated by the Trustees who have overall responsibility for the work of the Society across the UK.

Did the Trustees have the power to withdraw and suspend the Council's powers?

16. In September 2008 a decision was taken by the Trustees to suspend the powers of the Council. Following further discussion and mediation the Council was re-instated in December 2008 and three Trustees were appointed to serve on the Council. In April 2009 however, the Trustees decided to withdraw the powers of the Council.

² The Commission will not normally become involved in employment matters within a charity as this is the responsibility of the trustees. Our guidance on handling disputes (Conflicts in your charity: a statement of approach by the Charity Commission http://www.charitycommission.gov.uk/charity_requirements_guidance/charity_governance/good_governance/conapp.aspx) also explains that we will only become involved in internal disputes if there are no properly appointed trustees in place or where all other methods of resolving the dispute have failed.

17. The Society's constitution allows the Trustees to establish, and delegate powers to, National Councils. It gives the members the power to withdraw authority from a National Council through a vote at a general meeting, if they consider it would be in the interests of the Society to do so. However, neither the Society's constitution nor the Scottish constitution give the Trustees this power.
18. The Trustees received specialist legal advice that they had an implicit power under the general law to suspend or withdraw the Council's powers, as the Trustees had delegated them in the first place.
19. As the Council was elected by members of the Society in Scotland, the decisions to suspend and withdraw the powers of the Council had potentially serious consequences.
20. Given the nature and consequences of the Trustees' decisions to suspend and withdraw the Council's powers, and the absence of explicit powers to do so, this approach posed risks, particularly to the reputation of the Society in Scotland. To address this the Trustees could have applied to the Commission for regulatory authority³ to suspend and withdraw the powers of the Council as being expedient in the interests of the Society. If made, this would have put it beyond doubt that the Trustees had the necessary power.

Did the Trustees have the power to appoint additional members to the Council?

21. The decision to appoint additional members to the Council was the result of a mediation session (attended by the Council, the Trustees and the Patron of MSS Scotland). After the session legal advisers drafted an agreement that both the Trustees and the Council later agreed. The agreement restored the powers of the Council subject to certain conditions including, as an interim measure, three Trustees serving on the Council with the power to veto decisions taken by the Council.
22. The Scottish constitution sets out the composition of the Council, including the number of Council members and procedures for their appointment and decision-making. Members of the Council are directly elected by members of the Society living in Scotland. One other Council member is the Honorary Treasurer who is elected or co-opted by the Council. Decisions are taken by a majority vote, if there is no consensus, and (when necessary) the Chair has a casting vote. It also includes a procedure for amending the Scottish constitution, involving both the Trustees and the Scottish membership voting at a general meeting.
23. The Trustees' view was that, under the general law, they could impose conditions on the exercise of their delegated powers, and the mediation agreement imposed conditions which overrode the provisions of the Scottish constitution. Another interpretation is that the composition of the Council and its decision-making procedures were an integral part of the Scottish constitution, and could only be changed in accordance with the amendment procedure contained in the Scottish constitution. Another possibility may have been for the Council to be dissolved by the members of the Society at a general meeting, and for the Council to be reconstituted in a different form.
24. Our view is that the terms of the mediation agreement did not override the procedure in the Scottish constitution for changing the composition of the Council and its decision-making procedures. This procedure required changes to be agreed by the Trustees, and also by a two-thirds majority of members voting at a general meeting of MSS Scotland. We accept, however, that there is a range of possible interpretations and that the Trustees followed legal advice and firmly believed they were acting in the best interests of the charity.

³ An Order under s.26 of the Charities Act 1993

25. Ultimately however, the powers of the Council were withdrawn again in April 2009 having only met twice, so there appear to have been few (if any) material consequences as a result of the presence on the Council of three Trustees with powers of veto. In addition we understand that, at the Society's AGM in September 2009, the membership voted to become a company limited by guarantee, and will no longer be an unincorporated association. The relationship between the Council and the Society, and the rights of members and trustees, are clarified in the governing documents of the new company. In these circumstances we concluded that it would not be necessary or appropriate for the Commission to take further action.

Regulatory Advice

26. The Trustees are currently implementing the outcomes of a governance review which addresses some of the issues raised. The Commission advised the Trustees to:
- register the Society with OSCR as a cross-border charity (this has since happened); and
 - ensure that the rights of members of the Society to participate in decision making are clearly set out in the new constitution (see below).

Latest developments

27. During the course of our involvement with the Society a number of relevant developments have taken place that will have a positive impact on some of the issues raised.
28. In addition to voting to become a company limited by guarantee, members at the September 2009 AGM voted to have only one constitution⁴. This will clarify the relationship between the Society and National Councils in a single document.
29. In November 2009 a special general meeting was held (in Scotland) that voted in favour of the following resolutions:
- to be a united society across the UK; and
 - to delegate authority to a re-constituted Council.

A resolution proposing independence for MSS Scotland was defeated, which demonstrates support from the members for the new constitutional arrangements.

At the AGM in September 2010 the members voted in support of the new constitution.⁵

General issues for the wider sector

30. Charities which work across regulatory borders need to be clear about the different regulatory requirements of each jurisdiction. Charities registered in England and Wales that also operate in Scotland or Northern Ireland should contact OSCR and the new Charity Commission for Northern Ireland for details of their registration requirements.

⁴ Results of the 2009 AGM can be found in the minutes of the meeting on the charity's website at http://www.mssociety.org.uk/downloads/AGM_2009.473ce013.pdf

⁵ Results of the 2010 AGM can be found on the charity's website at http://www.mssociety.org.uk/about_us/about_our_society/agm/agm_2010_63.html

31. Where charity trustees delegate authority to committees or councils, the terms of the delegation should be clearly communicated, observed and monitored. We also recommend that these arrangements are regularly reviewed to ensure that they remain relevant and up to date. If arrangements cannot be changed in time to meet urgent needs then charity trustees should consider asking the Commission for advice and assistance, and for regulatory authority where appropriate.
32. Unincorporated associations are established by agreement between their members. It is important that the rights of members should be clearly set out in the governing document and any special procedures for their involvement in key decisions must be adhered to. This will ensure that any dissenting views of the members are properly considered.
33. The Commission expects trustees to keep constitutional and governance arrangements under constant review and to move quickly to resolve any anomalies which may arise.

Links to other relevant publications and organisations

The Hallmarks of an Effective Charity CC10

Complaints about Charities CC47

Conflicts in your charity – a statement of approach by the Charity Commission

Office of the Scottish Charity Regulator

Charity Commission for Northern Ireland

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