

Regulatory Case Report

The Arts Council of England

Registered Charity Number 1036733



This is a regulatory case report relating to The Arts Council of England published on 16 July 2010.

The Charity Commission ('the Commission') is publishing this Regulatory Case Report about our recent engagement with the charity as it has raised significant issues about managing conflicts of interest and benefits to trustees.

The Charity

1. The Arts Council of England ('the Charity') was registered as a charity by the Commission on 14 April 1994. It is governed by a Royal Charter granted on 30 March 1994 that replaced the earlier Charters of The Arts Council of Great Britain.
2. The objects of the Charity include developing and improving the knowledge, understanding and practice of the arts, and increasing the accessibility of the arts to the public.
3. The Charity furthers its objects through the provision of funding and other support for artists working in performing, visual and literary arts in England. This includes investing in educational projects, large-scale public art installations and established arts institutions throughout England.
4. The Charity's trustee body (known as 'the National Council') consists of 15 charity trustees including the Chair, the Chairs of the Charity's Regional Councils, and additional 'appointed members' appointed by the Secretary of State for Culture, Olympics, Media and Sport.
5. The Charity's income for the year ending 31 March 2009 was £594.1 million and its expenditure was £584.1 million with £583.7 million spent on charitable activities.

Source of Concern

6. The Charity contacted the Commission on 21 October 2009 to inform us that it had learnt that a grant of £10,165 had been awarded in April 2008 to one of the charity trustees.
- 7.¹ This raised concerns for the Commission as the Charity's Royal Charter provides that grants may only benefit charity trustees in specified circumstances, with the consent of the Commission, and in accordance with the Charity's own Code of Practice. Because these conditions were not met, the payment appeared to have been made without the necessary authority, and therefore in breach of the requirements of the Charity's governing document.
8. The Commission had produced specific guidance² for arts charities on managing conflicts of interest and trustee benefits which was published in April 2008. It was therefore of particular concern that a large arts charity was now in this position.

¹ This paragraph has been amended since the report was first published on 16 July 2010 as information came to light that meant it was no longer factually accurate. The amendment does not affect any of the findings or conclusions contained in the report. The original paragraph stated: This raised concerns for the Commission as the Charity's Royal Charter provides that grants may only benefit charity trustees with the consent of the Commission. Because the Charity had not sought prior authorisation from the Commission, the payment appeared to have been made without the necessary authority, and therefore in breach of the requirements of the Charity's governing document.

² The guidance was jointly produced with the Department of Culture, Media & Sport (DCMS) and entitled 'Charitable Museums and Galleries: A guide to conflicts of interest policies, trustee benefits and transactions between trustees and charities'.

Issues Examined

9. The Commission's involvement focused on how the unauthorised payment had occurred and what steps the Charity was taking to ensure that a similar incident did not occur again.
10. We met with the Charity twice and would like to record its cooperation with the Commission.

Findings

11. The Charity commissioned an independent review of its grant-making processes and procedures to determine how this particular payment had arisen and whether further unauthorised payments had been made. This report was forwarded to the Commission on 12 December 2009.
12. The report revealed that whilst no further payments had been made to charity trustees, a company linked to one of the trustees had received a grant of £3,000 from a CABE (Commission for Architecture and the Built Environment) programme that was administered by the Charity. There had also been a previous application in May 2005 where a trustee had applied for a £4,650 grant. Although the application was unsuccessful, at no point was the applicant identified as a charity trustee.
13. The report concluded that there were insufficient checks built into the grant-making processes to ensure that applications from members of the National Council were not taken forward.
14. In addition to the checks made by the Charity during the grant-making process, each charity trustee was also required to keep a register of interests up to date. The review found that despite completing a form for the 2008/09 period, the individual in question had not disclosed that the grant had been received.
15. The report was discussed by the charity trustees at a meeting on 12 January 2010. The National Council resolved that the individual trustee concerned should be asked to repay the grant in full. The National Council agreed that the individual had applied for the grant in good faith, and recognised that the Charity's staff had given misleading advice about the individual's eligibility for grant funding. The individual's application for the grant had included a CV giving details of their trusteeship.
16. Since that meeting the Charity has confirmed that it has introduced changes to its systems to ensure that applications made by charity trustees are picked up in future. This includes an enhanced grant management system that flags up applications from conflicted parties and improved training for grants staff. This will ensure that no further grants are inadvertently made to charity trustees.

17. The Charity has also confirmed that the National Council recognises that individual charity trustees are responsible for ensuring that they comply with any legal requirements – including following any internal procedures to ensure that any benefits they receive are duly authorised.
18. The Charity has informed us that it has updated its induction programme for new charity trustees to ensure that the need to register and manage conflicts of interest is clearly explained and understood.

Conclusions

19. The Commission acknowledges that the Charity has put in place policies and procedures to avoid any inadvertent breach of the Charity's governing document in the future.
20. The Commission has no reason to doubt that the individual trustee in question acted in good faith and the Commission has made it clear to the Charity that it is the charity trustees who are collectively responsible for ensuring that they are compliant with any legal requirements, and to ensure that conflicts of interest are carefully managed in future.
21. The Commission has recommended that, as part of its induction process, the Charity should include a comprehensive training section on trustee responsibilities and understanding the charity's governing document. It should also ensure that individual trustees acknowledge that they have read and understood the relevant documentation that relates to these areas.

Issues for the wider sector

22. Charity trustees are responsible for avoiding and managing conflicts of interest within their charities. Trustees should not be in a position where their personal interests and their duty to the charity conflict (unless the conflicts, and any personal benefits, are duly authorised, and conflicts are managed effectively).
23. Where they feel that a conflict of interest may arise, charity trustees should ensure that they take appropriate professional advice and follow the basic checklist set out in section 12 of the Commission publication *A Guide to Conflicts of Interest for Charity Trustees*.
24. A key aspect of managing conflicts of interest is to be open and transparent. All trustees should advise their fellow trustees of any actual or potential conflicts of interest as soon as they arise.

25. Charity trustees must ensure that any trustee benefit is duly authorised, and (where necessary) is reported in the charity's accounts as a related party transaction.
26. Charities should ensure that the topics of managing conflicts of interest and trustee benefits are covered as part of their trustee induction process. This should include charity trustees familiarising themselves with the Commission's publications set out at the conclusion of this report.
27. Charity trustees should familiarise themselves with relevant Commission guidance on an ongoing basis to ensure that they are aware of current legal requirements and good practice.
28. Charity trustees should be aware that such incidents may impact upon public trust and confidence in their Charity and the wider sector.

Links to other relevant publications and guidance

Charitable Museums and Galleries: A guide to conflicts of interest policies, trustee benefits and transactions between trustees and charities

A Guide to Conflicts of Interest for Charity Trustees

Trustee Expenses and Payments (CC11)

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