

Regulatory Case Report

Eelapatheeswarar Aalayam

Registered Charity Number 1125884



This is a Regulatory Case Report of the Commission's investigation concerning the activities of Eelapatheeswarar Aalayam ("the Charity"). Allegations were made that the Charity provided support to the Liberation Tigers of Tamil Eelam ("the LTTE"), a proscribed organisation under the Terrorism Act 2000. The Commission's Report was published on 12 February 2010.

Having regard to the principles of best regulatory practice, the Charity Commission ("the Commission") has decided to publish this Regulatory Case Report¹ on its recent investigation into this Charity.

This report also identifies issues for the wider sector.

The Charity

1. Eelapatheeswarar Aalayam ("the Charity") has existed as a non-charitable association since 1999. In 1999 and 2002 the Commission considered the status of Eelapatheeswarar Aalayam, however, its purposes as set out in its constitution and its then activities were not exclusively charitable. In 2008 it adopted a new charitable constitution and was entered on the Commission's Register of Charities on 15 September 2008. The Charity is governed by a Constitution dated 9 August 2008.
2. The Charity's object is:
"to advance the Hindu religion according to the special traditions prevailing in Sri Lanka and Southern Indian States where compatible religious practices are followed."
3. The Charity runs a Hindu temple in Wembley, London, primarily used by Sri Lankan and Southern Indian Hindu communities but also by the wider Hindu Community.
4. Being newly registered, the Charity has not yet submitted annual accounts to the Commission². Their first sets of accounts are due to be submitted by 31 May 2010. However, we are aware that the Charity's expenditure, has to date, been mainly related to the running of the temple. The Charity has made one cash donation of £300 to a Sri Lankan charitable organisation³, and has also run one clothing collection for the benefit of people in Sri Lanka.

¹ More information on Regulatory Case Reports can be found on the Commission's website (www.charitycommission.gov.uk) under the link "Inquiry Reports and Regulatory Case Reports".

² All charities must prepare accounts and make these available upon request irrespective of their annual income. The duty to file accounts with the Commission applies to all registered charities whose gross income exceeds a statutory threshold. For financial years ending (FYE) prior to 1st April 2009 this was £10,000, the threshold for subsequent financial years is £25,000.

³ The Sri Lanka Islamic Forum -UK, is a registered charity in Sri Lanka. It is not a registered charity in England and Wales.

Background and Source of Concern

5. In December 2008 the Commission received a complaint about the Charity. This complaint came from a Member of Parliament that was sent to another government department and subsequently referred to the Commission. The complaint alleged that a trustee of the Charity, a Mr J, was working on behalf of the LTTE. It also alleged that Mr J and another of the Charity's trustees, Mr V, met with the LTTE in 2005.
6. The Commission's published guidance⁴ is clear that links between a charity and terrorism are unacceptable. Trustees must not engage in conduct or activities which would lead a reasonable member of the public to conclude that the charity or its trustees were associated with a proscribed organisation or terrorism in general.
7. Following receipt of the complaint, the Commission conducted an assessment⁵. The Commission is not a prosecuting authority, and does not investigate criminal matters. As the complaint purported that criminal offences had been committed the matter was referred to law enforcement. The Commission's understanding is that no further action resulted from this. The assessment determined that although the complaint was not accompanied by substantive evidence to support its allegations, it raised sufficiently serious regulatory matters that it was appropriate to establish the facts and engage with the Charity to address these.

Issues Examined

8. The Commission's case was opened on 19 June 2009, and its substantive investigations concluded on 14 November 2009.
9. The Commission's investigation considered in light of the allegations of links between a trustee and a proscribed organisation, whether:
 - (i) there were concerns about those individuals' suitability to hold position as trustee;
 - (ii) the charity trustees have discharged their duties and responsibilities to the Charity, particularly as regards handling any allegations and concerns properly and appropriately; and
 - (iii) the charity trustees are ensuring that the Charity and its reputation is protected.
10. In examining these issues, the Commission looked at the past and current activities of the Charity. This included meeting and corresponding with the trustees and visiting the Charity's premises. The Commission also contacted the original complainant to request evidence to support his allegations. The complainant had no further information to supply.
11. The Commission's investigators met with the trustees to discuss the allegations with them and obtain their account of the issues under consideration.
12. The Commission also conducted a review of the Charity's financial books and records, from its registration to the most recent documents available.

⁴ Charity Commission Counter Terrorism Strategy and Chapter 1 'Charities and Terrorism' of the Compliance Tool-Kit 'Protecting Charities from Harm'. This is available on the Commission's website.

⁵ The assessment was conducted in accordance with the Commission's Risk and Proportionality Framework for its Compliance work. This is available on the Commission's website.

Findings

13. The trustees informed the Commission that in 2005 two of their number - Mr J and Mr V visited Sri Lanka. The Commission noted that in 2005, the Eelapatheeswarar Aalayam was not a charity and Mr J and Mr V were not charity trustees. The trustees explained that one of the purposes of this visit was to seek a meeting with the LTTE to discuss peace negotiations and the impact of the 2004 tsunami.
14. However, the 2005 visit to Sri Lanka had the potential to affect the reputation and activities of the Eelapatheeswarar Aalayam. Public accusations of support for terrorism had been made against Mr J and Mr V, and it had been suggested publicly that they had travelled to Sri Lanka in 2005 with the intention of meeting the LTTE in any event.
15. In addition to his trip to Sri Lanka in 2005, Mr J informed the Commission about the active and public role he played, and continues to play, in encouraging peace in Sri Lanka. He reported that in 2009 he had been contacted by a representative of the LTTE who asked him to continue his role in peace negotiations. Mr J also reported that he was asked to speak at demonstrations in London in early 2009 about the escalating conflict in Sri Lanka, but declined because of the presence of LTTE flags at the demonstration.
16. When the Eelapatheeswarar Aalayam became a charity, and these individuals became charity trustees in 2008, there was a risk that these accusations may have harmed, or could harm, the Charity's reputation. The complaint sent to a Member of Parliament appeared to support this position. However, upon further investigation, it did not appear that the complaint was indicative of wider reputational issues for the Charity.
17. Having examined all the evidence available, the Commission determined that given the lapse in time between the 2005 visit and the registration of Eelapatheeswarar Aalayam as a charity and the fact that the material appeared to suggest no wrong doing on the part of the trustees, the events of 2005 had minimal relevance to the Charity's current work and reputation.
18. The Commission considered that Mr J's recent work in encouraging peace in Sri Lanka did not comprise actions likely to be perceived as supporting a proscribed organisation. They were undertaken in his personal capacity and not on behalf of the Charity. Indeed some of those with whom he worked in this peace-building role with were entirely unaware of his involvement in the Charity.
19. Upon examination the work undertaken by Mr J could not be seen by the Commission to have harmed the reputation of the Charity. Nonetheless, he and the other trustees were advised of the importance of regularly and actively reviewing whether this work could begin to impact on the Charity, and if so what action they would need to take.
20. The Commission found no evidence of Mr J, or the other trustees, having made public statements of support (even in ambiguous terms) for the LTTE, or of him using language or imagery associated with the LTTE in a way which could inadvertently promote its cause or activities.

21. The review of the Charity's financial books and records identified areas of potential weakness in the Charity's financial procedures. In particular, the investigation had raised some concerns surrounding the Charity's financial controls regarding cash handling, namely whether the Charity's policies and procedures in this regard are sufficient for its needs and are being properly followed by the Charity. Although weaknesses in the policies and procedures were identified the investigation found no evidence of misappropriation of funds. The Commission discussed this with the trustees and provided specific regulatory advice and guidance in relation to these concerns⁶.

Conclusions

22. The allegations about the links between the charity and a proscribed organisation were not made out based on the evidence the Commission examined. In addition, the Commission concluded that:
- (i) there was consequently no linked concern about the suitability of the two individuals to hold the position of trustee;
 - (ii) the trustees have discharged their duties and responsibilities in handling the allegations and concerns properly and appropriately and could demonstrate that they are managing the potential risks associated with the work undertaken by Mr J in a personal capacity; and
 - (iii) the trustees were aware of risks to the Charity including perceived association with proscribed organisations. The trustees appeared to be ensuring that the Charity and its reputation was protected.
23. The Commission also concluded that the Charity and its trustees were unnecessarily exposed to undue risk through failing to follow its internal financial policies and procedures – in particular with regard to cash handling.

Outcomes

24. The Commission provided regulatory advice and guidance to the trustees on the risks of association, and perceived association, with proscribed organisations and how they must take adequate steps to manage these.
25. As a result of the Commission's intervention the Charity has conducted a review of its financial policies and procedures ensuring good practice principles are in place and the Commission provided regulatory advice and guidance to assist with this.

⁶ For more information please refer to 'CC8 – Internal Financial Controls for Charities'. This is available on the Commission's website.

Issues for the Wider Sector

26. A charity is entitled to have the independent and objective judgement of its trustees, acting in the best interests of their charity. Trustees must ensure they do not permit any personal associations to interfere with their judgement as charity trustees. Trustees must also ensure that their conduct in their personal capacity does not impact negatively upon their charity's reputation. To do so may breach their duty as trustees to safeguard their charity from undue risk. Any personal associations between a trustee and serious criminal activity, such as terrorism, could have a significant negative effect on public confidence in their ability to discharge their responsibilities as charity trustees.
27. Proven instances of terrorist involvement in and abuse of charities are extremely rare but unacceptable. It is the responsibility of charity trustees to safeguard their charity from the risk of abuse, including terrorist abuse. The Commission will support them in doing this, and believes that the most effective way to minimise the risk of abuse is through implementing strong governance and financial arrangements.
28. Any person who has a serious concern about criminal activity involving trustees or any persons connected to a charity should inform us and/or the police as appropriate.

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