

Complaint concerning Arun Arts Limited – Case No C-346891-7JW3

7 February 2012

The Charity Commission was copied into an e-mail between a complainant and the then Chair of Arun Arts Limited (“the charity”), Jim Brooks. The e-mail was a complaint about certain aspects of the running of Arun Arts Limited.

The substance of the complaint was as follows:

- The complainant expressed deep concerns about the running of the charity. The complainant, who was of the opinion that they were a member of the charity, named all of the trustees of the charity and identified two who the complainant believed were also directors of Regis Centre Limited (RCL).

The complainant alleged that ‘Regis Centre Limited is not wholly-owned or in any legal sense connected with Arun Arts, though it was set up to run the commercial aspects of the centre's operations. Therefore the large majority of activity run for the charity at the centre is done through RCL and this means the major part of the centre's annual turnover goes through that company.’

The complainant asked the charity's Chair ‘has any money at any time since RCL started been paid over to trust by way of surplus? Having obtained copy of RCL's accounts from Companies House to 31st August 2010, I note that there was an operating surplus? Did the Directors of RCL provide you with a copy of their accounts, and did the Trustees consider them?’

The complainant went on, ‘I gather that you have been seeking the three shareholders of RCL to relinquish their shares to the Trust, and I gather that a former director of RCL was prepared to do so but had to offer their shares to the directors of RCL on resignation from their board. I witnessed at the AGM recently one of the directors of RCL point-blank refusing your request and that they said that they would not do so until there were changes at Arun Arts.’

‘It is evident to me that you do not have the proper accountability, scrutiny and control over RCLs operations, and that this has existed for many months.’

The complainant was of the view that RCL had been allowed, in effect, to run the centre's affairs without adequate control and scrutiny of the Trustees and how much influence RCL has in the running of the affairs of the Trust. The complainant provided examples. In the complainant's opinion:

1. *‘RCL's Managing Director is also a member of Arun Arts, was permitted to speak extensively in the meeting, had power to vote*

and make proposals. Another RCL staff member also had that status and made their presence known.'

2. The complainant said they understood that *'another Director of RCL runs a theatre group which is neither company nor charity'*. The complainant alleged that that person had *'a conflict of interest not only with RCL but also in terms of the theatre group.'* The complainant also alleged that that person was *'one of a number of RCL directors now proposed for directorship of the Trust [the charity]'* and alleged that that person held shares in RCL.
3. The complainant alleged that another RCL director was a committee member of an art group which used the centre, and that that person holds RCL share also. The complainant alleged that that person was also proposed as a trustee of the charity.
4. The complainant alleged that about 15 years ago an unauthorised loan was made by the charity to one of its trustees. The loan was for £1500. A report was sent to the Charity Commission at the time. The complainant alleged that the recipient of the loan initially claimed the loan was for a mortgage repayment, then for a helicopter flight to bring in a performer. The complainant stated that the trustee had resigned when it was determined that neither explanation was true and that the loan was unauthorised. However, the complainant was unsure whether the money had ever been repaid, and said that the report (that which was sent to the Charity Commission) had made clear recommendations on a number of points. The complainant was of the view that none of these had been carried out. The complainant claimed that the trustee who had received the loan was connected with one of the present RCL directors. The complainant was unsure the charity's trustees ever sought repayment of the loan.
5. The complainant alleged that many people were encouraged to join the charity as members just prior to its 2012 AGM, and that the trustees allowed those new members to be recognised as having the right to vote at the AGM.
6. The complainant alleged that at a previous AGM an attempt was made to expel a member, and also alleged that the charity's rules were not followed with regard to this.

The complainant informed the charity's chair that they considered the management of the charity was in serious question, that there had been a return to *'previous issues of lack of accountability'* and that the integrity of the charity was compromised.

The complainant made suggestions to the charity's chair as to how the situation should be resolved. The complainant outlined what they considered to be the basic requirements:

'You should call a trustees meeting to resolve the issue of control and accountability. This will include:

- a. The conflict of interests of trustees who are also directors of RCL*
 - b. The lack of any agreement between RCL and Arun Arts defining their relationship*
 - c. The requirements for an acceptable, wholly-owned commercial arm*
 - d. The role of an RCL director in demanding membership forms which were meant to confirm members recorded in your records but which were then handed out to people who were not in that book by that RCL director and who flooded the AGM*
 - e. The total lack of accountability of RCL which appears to have taken over the centre in every regard, and the way in which information has been denied.*
 - f. Action to suspend membership because there is doubt as to who is a legitimate member and for an inquiry to examine who is and is not a member and for a proper scheme of membership.*
 - g. Observing rule 45 (1) and (2) of the 2011 M&A and general legislation re conflict of interest such that on the issue of membership and RCL itself, no RCL director who is a trustee may vote.'*
7. The complainant alleged that the chair's efforts to resolve matters through negotiation had been rejected by *'the RCL people'* and the complainant accused the charity's chair of being negligent towards the charity.

16 February 2012

- The Charity Commission acknowledged the complaint, and asked the complainant for a copy of the report into the loan (it was not clear when this report had been made, but the reason the Charity Commission didn't have a copy was that it was submitted in 1997, and in accordance with the Public Records Act most case papers are destroyed 5 years after a case is closed).

- The Charity Commission contacted Jim Brooks, who was understood to be the chair of trustees of the charity. The Charity Commission sought information as follows:

The Charity Commission acknowledged that it was copied into a complaint which was addressed to Mr Brooks. The Commission asked Mr Brooks for a response to the contents of the complainant's e-mail, but also asked specific questions as follows:

- Please could you explain the nature of the relationship between Arun Arts Company Limited and Regis Centre Limited? Is there a written agreement between them? If so, please may we see a copy?
- In the charity's objects, a centre is referred to. How is this centre run on a day-to-day basis? Is Regis Centre Limited involved in the running of the charity's centre? If Regis Centre Limited is involved, what benefits accrue to the charity from this arrangement? How are any such benefits calculated?
- I note four of the five trustees of the charity are also directors of Regis Centre Limited, including you. Please could you tell me who owns Regis Centre Limited, and how any profits it makes are distributed? How are conflicts of interest managed, particularly in relation to issues which concern both the charity and Regis Centre Limited? Does the charity have a conflicts of interest policy? If so, please may we see a copy?
- Are there any trustees of the charity who are also committee members of any other group which has relationships with the charity, such as art groups? If so, please could you provide details? Please could you also let me know how those conflicts of interest are managed?
- The Commission asked who the manager of the centre was, and who the manager was employed by.
- The complainant referred to a previous unauthorised loan to a trustee of the charity. Is this correct? When did this occur? Has this money been repaid to the charity? If so, was the charity paid all due interest? Is it correct that the person involved is no longer a trustee? Is that individual related to any of the current trustees?

24 February 2012

The complainant contacted the Charity Commission to say that they had just left a meeting with 3 trustees who had submitted their resignations, including Mr Brooks, the chair.

The complainant's view was that those trustees' resignation letters covered a number of issues the complainant had raised with the Charity Commission and the trustees.

The complainant said that following the resignations, there were 2 trustees left, which was short of the minimum number required. The complainant claimed both remaining trustees were directors of RCL.

The complainant stated that an AGM had been called for mid-March 2012, and the complainant said this was an attempt to reconvene an earlier meeting which had been adjourned. However, the complainant's view was that the previous AGM had been abandoned, and that insufficient notice had been given of the new AGM.

The complainant also claimed that just prior to the charity's AGM, one of RCL's directors handed in 20 or so '*alleged*' memberships, adding around 50% to the total number.

28 February 2012

The complainant contacted the Charity Commission to provide the names of the charity's remaining trustees, and also as notification that the complainant intended to convene a meeting on 8 March, to which all the charity's members would be invited.

The complainant had also informed members of the complainant's view that the re-convened AGM of the charity was not valid, and that any appointments there would not be valid.

11 March 2012

Complainant writes and includes minutes of meeting of 8 March. At this meeting, the various concerns raised by the complainant in the e-mail of 7 February are discussed. Meeting attended by 9 people.

13 March 2012

E-mail received from new chair of charity, Hazel Latus. She sought advice on the trustees' options now there were only two of them.

She also gave an overview of some of the problems experienced at the charity.

14 March 2012

The Charity Commission wrote to Hazel Latus, Chair of the charity, repeating the questions put in the e-mail to Jim Brooks of 16 February. Guidance was also provided concerning the powers of trustees when there is fewer than the minimum number.

16 March 2012

The charity responded to the Charity Commission's e-mail of 14 March. In it, the Charity Commission was informed:

- Regis Centre Limited was set up as the operational company for Arun Arts. Regis Centre Limited, as the trading arm, looks after the hiring of spaces, including the theatre, to community groups and commercial promoters to bring arts and entertainment to Bognor Regis, in line with the objects of the charity.

As of 16 March 2012 there was no written agreement between the two companies [Arun Arts Limited and Regis Centre Limited].

- The Regis Centre is run on a day to day basis by a small team. They look after the box office, front of house operations, cafe, charity shop, administration, marketing, backstage areas, and maintenance. All income generated by the Centre is used for the running and maintenance of it, and enables the objectives of the charity to be achieved.
- When Regis Centre Limited was established, it was with three equal shareholders, each with a £1 shareholding. The charity's trustees do not believe any monies have ever been received by the shareholders, and any profits are used for running purposes, and for a small operational reserve.

The trustees view is that there had been conflict of interest issues in the past. The trustees said it was their intention going forward to ensure that this did not continue. The trustees said that as of 16 March 2012 Arun Arts did not have a written conflict of interest policy, other than that outlined in the Arts and Mems.

- The trustees said that as of 16 March there were two trustees, and neither were on any committees of associated art groups
- The name of the manager was supplied, and the trustees informed the Commission that the manager was employed by Regis Centre Limited.
- The trustees said that this was the first year that the turnover of the charity has exceeded the £25,000 threshold, and that they had arranged for the accounts to be independently examined before submission.
- With regard to the loan, the trustees as of 16 March felt unable to comment. They said the loan occurred before their time.

The trustees informed the Commission that a third trustee had been co-opted and that they would soon be holding an EGM to recruit more trustees.

19 March 2012

The chair of the charity rang the Charity Commission to find out why the trustees had asked questions. It was explained that the Charity Commission was trying to establish what role, if any, there was for it concerning the issues raised by the complainant.

28 March 2012

The Charity Commission was copied into an e-mail between the complainant and the Chair of Trustees. The complainant alleged that had it not been for the complainant's actions, the trustees would not have tackled the issues that had been raised.

The complainant also claimed still to be a legitimate member of the charity, and asked for proof of termination of membership.

28 March 2012

The Commission was copied into an e-mail sent from the complainant to Companies' House. The complainant highlighted what they considered to be deficiencies in the holding of a general meeting by the charity (which is a company), and therefore the appointment of the company's directors (the charity's trustees).

30 March 2012

The Commission sent an e-mail to the charity's chair, asking the following:

- You have informed me that RCL runs the Regis Centre. Would I be correct to say that the Regis Centre is owned by Arun Arts Company Limited ("the charity")? If not, on what basis does the charity occupy and use the building? What costs does the charity have in relation to the building?
- You have informed us that there is no written agreement between the charity and RCL, and that RCL is owned by three shareholders (although to your knowledge none of the shareholders have ever received money from RCL). Apart from the fact that the Regis Centre is operated by RCL, it is unclear what benefit the charity receives from this arrangement, and I would be grateful for clarification.
- Are any of the charity's trustees directors or employees of RCL? If so, which are? I would be grateful if you could let me know the names of all of the trustees of the charity.
- When membership of the charity is referred to, it is not clear to me whether this is membership of the charitable company, or another form of membership (such as there may be a form of membership whereby

you receive certain benefits in return for your membership, such as discounted tickets). Please could you clarify? Who maintains the membership list, both of the charitable company and any other types of membership there may be? Are the trustees satisfied that they know who the members are?

- When was notice of the general meeting of 23 March sent?

2 & 3 April 2012

A few e-mails were sent to the Charity Commission by the charity.

It was stated that the charity had 62 members.

The EGM was called '*at the earliest opportunity*' after '*taking legal advice and speaking to*' a Commission officer. The trustees expressed confidence that the meeting was called correctly and within the proper timescale.

At the time the EGM was called the charity had two trustees. The advice they received from a Commission officer and through other channels was that due to their being only two the only power they could adopt was to call an EGM to vote on new trust members.

Four new trustees were recruited at the EGM, and their names were provided to the Charity Commission. As of the end of the EGM, the charity had six trustees.

4 April 2012

The complainant e-mailed and expressed the view that as there had only been two trustees prior to the EGM, that the meeting was inquorate and appointments made at that meeting were invalid as a result.

The complainant stated they were not permitted to enter the meeting and a police officer summoned to effect their removal.

The complainant stated that the previous chair of trustees had admitted that the complainant had not properly been removed from membership.

The complainant claimed one of the new trustees was also a director of RCL.

The complainant formally complained about each of the above issues, and also that action to resolve problems had been delayed for several months by the charity's trustees, and that RCL exercised undue influence over the charity.

4 & 7 April 2012

Correspondence between the complainant and Companies' House, copied to the Charity Commission.

Companies' House had said they acted as a registrar, and recorded company information sent to them. They relied on companies submitting information on good faith, and were not in a position to investigate any further. Companies' House said they had no investigative powers.

The complainant requested Companies' House suspend the four new appointments of directors on the basis of irregularities in calling the EGM, and the effect of this on any subsequent actions at the EGM.

Companies' House reiterated the points made in their previous e-mail.

The complainant encouraged Companies' House to contact the Charity Commission, as the '*lead regulator*' of the charitable company.

8 April 2012

The chair of the charity contacted the Charity Commission to say the trustees are trying to correct things that are wrong at the charity, and bring up-to-date the paperwork that should be submitted to the Charity Commission.

The chair stated that the trustees had several times recently spoken to Charity Commission officers seeking advice on how to correct problems at the charity.

18 April 2012

The Commission contacted the charity to inform the trustees of its conclusions, and to offer advice to help the trustees of the charity rectify any problems that exist at the charity.

The Commission concluded that there were some issues which needed attending to by the trustees as soon as possible. In addition to setting this out in the e-mail, the Commission offered to meet the charity's trustees to ensure there were no misunderstandings (the Commission emphasised the importance of the charity being put onto a proper footing) and to clarify any advice.

The Commission concluded that the issues of concern related mainly to the charity's relationship with Regis Centre Limited. The following facts were set out:

- As of 18 April 2012 Regis Centre Limited (RCL) was independent of, and not owned by, the charity, but operated the Regis Arts Centre on the charity's behalf. Its profits were recycled into the running of the arts centre, and the trustees informed the Commission that the main benefit to the charity was that it was not exposed to the risks of running a theatre, charity shop and cafe.
- There was no written agreement between the charity and RCL, although the trustees had said they were committed to rectifying this.
- It was the case that 3 of the 6 trustees of the charity were also directors of RCL.

The Commission went on to advise:

'As you will be aware, charities are independent bodies established for exclusively charitable purposes. Purposes cannot be charitable if they are not also for a public benefit. The role of charity trustees is to care for their charity on behalf of the public, and charity trustees have a legal duty to act only in their charity's interests, and to ensure their charity's interests are upheld and furthered. When a charity trustee holds another role which requires them to consider other interests, then it is important that as far as possible the trustee avoids those interests clashing or conflicting, or if it is not possible to avoid a conflicting interest, that the conflict is managed appropriately.'

The arrangement between the charity and RCL is unusual. Usually in such situations, a charity would operate the arts centre itself, and perhaps have a wholly owned subsidiary trading company to operate the shop, and maybe the cafe. Alternatively, the charity might pay another body (such as a company) to operate the centre on its behalf, but would have a written agreement with that company defining the relationship, and how any profits were to be distributed. Such an agreement would also serve to protect the charity's interests. It would also be the case that the trustees of the charity would keep any such situation under review to ensure that arrangement continued to represent the best interests of the charity.

Also, in a situation in which some of the trustees of the charity were also directors of the other company, there would be a recognition of their conflicting interests and these would be managed appropriately, using a formal conflicts of interest policy. This would usually require trustees to absent themselves from discussions on which they had conflicting interests.

In light of the above, and in order for the charity's trustees to discharge their responsibilities towards the charity, we would recommend the following:

- The charity's trustees should fully consider the charity's relationship with RCL in order to satisfy themselves that this represents the charity's best interests. A wide range of options should be considered, including bringing the activities in-house, establishing a wholly-owned trading subsidiary to undertake certain activities, or contracting a company to run the Regis Arts Centre. With the final option, consideration should be given as to whether continuing the relationship with RCL continues to best represent the charity's interests.*
- If it is decided to continue with a similar arrangement to the present, then there should be a written agreement between the charity and the other company. This should detail their respective roles and obligations, and how any profits are to be distributed. This should also serve to protect the charity's interests.*
- The trustees have a duty to properly manage conflicts of interests, and we would strongly recommend the development of a conflicts of interest policy. This means that those trustees who are also directors of RCL should not take part in any discussion of relations between the*

two companies, or be party to any sensitive documentation relating to those relations. This would include any discussion impacting on whether RCL is the appropriate partner of the charity in running the Regis Arts Centre, or any discussion concerning a written agreement between the charity and RCL. The trustees may find the Commission's [Guide to Conflicts of Interest for Charity Trustees](#) useful in devising a policy, although I imagine there may be other useful resources, such as the charity's local Council for Voluntary Service, or the internet.

The trustees should take professional advice on the above as appropriate. Also, the charity should have separate advisers to any other party in any discussion and negotiations on a contract or written agreement.

Irrespective of the above, the trustees need to take steps to ensure that the charity's funds and the Regis Arts Centre are used only to further the charity's purposes, as stated at clause 3 of the charity's Memorandum of Association.

Our records show that the charity has not submitted its annual return for the year end 31 August 2008. If you are able to locate this document and send it to us, that would be helpful. You will be aware that the charity's accounts should be prepared on an accruals basis, and that if its income is greater than £25,000 per annum, then its accounts should be both independently examined. You may find the Commission's guidance on [accounting requirements](#) and [external scrutiny requirements](#) helpful.'

The Commission referred to the issue of whether the complainant is a member of the charity and whether the charity's trustees had been validly appointed.

The Commission noted there were conflicting versions as to whether the complainant was a member. The Commission stated that it had only limited resources and was not willing to investigate competing claims over the membership of an individual.

In relation to the validity of trustee appointments, the Commission noted that the two trustees had a power under the charity's governing document to either appoint new trustees up to the minimum or to call a general meeting (to have the members elect new trustees). As the two trustees had decided to call a general meeting, they were required to give at least 21 days notice to members.

The Commission asked for confirmation that the EGM was called in accordance with the requirements of the governing document.

19 April 2012

Response from the chair stating that the trustees were committed to attending to the issues raised by the Charity Commission.

Also stating that the EGM was called in accordance with the terms of the charity's governing document.

The chair also stated that the trustees would welcome a meeting with the Charity Commission.

19 April 2012

The Commission contacted the complainant. The Commission explained its view that as far as it could determine, the charity's EGM had been correctly called.

The Commission informed the complainant that it would not be pursuing the issue of the complainant's membership any further. The reason given is included in the following paragraph from the 19 April e-mail:

'I think I should also state at this point that I have received conflicting information about the status of your membership. Although it is important that a charity maintains accurate membership records, I am not convinced that, on its own, a failure to do so in respect of you (if indeed, the charity has failed to maintain an accurate record in this regard) indicates a serious risk of significant harm to or abuse of a charity, its assets, beneficiaries or reputation (the criteria we use to determine which complaints we should investigate further). Clearly these criteria reflect the Commission's limited resources, and we are not willing to investigate the status of your membership any further.'

The Commission did state it was raising the other points the complainant had identified with the charity, and would inform the complainant of the outcome of the case in due course.

19 April 2012

The complainant e-mailed the Charity Commission.

The complainant noted the Commission was relying on a governing document from 1996, but the complainant was aware of a revised governing document of 2011, which is the governing document recorded on the Companies' House website.

The complainant raised the issue of membership again. The complainant's argument was that their membership status is '*an aspect of appalling mismanagement*', and combined with many other issues was evidence of a serious risk of harm to the charity.

The complainant expressed frustration that the Commission was unwilling to pursue the membership issue further.

23 April 2012

The Commission wrote to the complainant and denied it was not taking the complainant's points seriously. The Commission wrote:

'As I told you in my e-mail of 19 April, several points you informed us of are being raised with the charity's trustees. We are committed to ensuring Arun Arts Company Limited, as with all charities, is properly managed in

accordance with the law and accepted good practice. I am bound by a duty of confidentiality not to inform you of the details of my discussions with the trustees, but I did say I would inform you of the outcome of the case in due course.

On the question of your membership, I have conflicting information. Clearly this could be investigated further, but for the reasons I put in my e-mail of 19 April, I don't think this would be a good or proportionate use of the Commission's resources. Hopefully, once our case has been concluded, there will be no such disputes in the future.'

The Commission reiterated its view that the 2011 document was not the charity's legitimate governing document, but that whichever of the 1996 or 2011 documents were looked at the process for calling a general meeting and dealing with too few trustees was the same.

The Commission thanked the complainant for bringing the existence of the 2011 document on the Companies' House website to its attention.

23 April 2012

The Commission received an e-mail from the charity's chair, referring to arranging a meeting with the Charity Commission.

The charity's chair also informed the Commission that the 3 RCL shareholders had agreed to return their shares to the charity, and that discussions had been had about properly drawing up a contract between RCL and Arun Arts. The chair informed the Commission that any such contract would be drawn up by an outside professional.

23 April 2012

The Commission e-mailed the charity's chair and stated the following:

'I note the proposal to get an outside professional to draw up an agreement between the charity and RCL. It would not appear therefore that you have followed my strong recommendation for the trustees (those who are not conflicted by either being shareholders or directors of RCL) to consider whether continuing the relationship with RCL represents the best interests of the charity, and what arrangement and with who would represent the charity's best interests. The trustees of Arun Arts Company Limited have a legal duty to ensure the charity's interests are being served, and as part of fulfilling this duty should keep any arrangements the charity has under review. This would seem like an opportune moment to review the charity's relationship with RCL.

Even if it was determined that continuing a relationship with RCL would be in the charity's best interests, the suggestion that an outside professional would draw up an agreement does not seem to leave much room for the trustees of the charity on one hand and the directors of RCL on the other to properly consider and negotiate the best deal for their respective organisations (to be clear, I am not suggesting not getting outside professional help; only that Arun

Arts Company Limited should be receiving its own confidential advice, separate from the other party, whether RCL or any other organisation).

I cannot emphasise strongly enough the need for the trustees of Arun Arts Company Limited to consider only about what is best for Arun Arts Company Limited, and give NO consideration to the welfare or interests of RCL. Those trustees who are also directors or shareholders of RCL have conflicting interests, and that is why they should take no part in considering whether the charity should maintain a continuing relationship with RCL or any discussion that impacts on RCL.

It is vitally important that the management of the charity is put onto a proper footing (the present informal and unwritten arrangement with RCL does not suggest strong management), and that the correct decisions are taken having considered only the charity's interests (and not those of any other body, including RCL). That is why I suggested a meeting. It is important that the charity's trustees are clear about their legal responsibilities, and that the charity can be placed on a good footing going forward.

Another issue has arisen. We have become aware that the governing document recorded by Companies' House is not the same as we have recorded as the charity's governing document. Looking through our records, I note that the charity contacted us in September 2011 to notify us of amendments to its governing document. At the time we did not accept that any amendment had been properly made as we were not supplied with a copy of the resolution effecting the amendment (even after we asked). Unless we receive a copy of a resolution relating to those amendments, we will treat the 1996 Memorandum and Articles of Association as the charity's rightful governing document (as there is no evidence to the contrary), and we would expect the trustees to act in accordance with the 1996 governing document. I assume you also do, given that in your e-mail of 18 April you confirmed the new trustees had been appointed in accordance with articles 5 and 44, and those article numbers would only make sense if looking at the 1996 Memorandum and Articles of Association. If no resolution can be produced we would expect the trustees to contact Companies' House to ensure the correct governing document is recorded by them.

Notwithstanding whether there is a resolution effecting amendments to the charity's governing document in 2011, there are certain parts of the 1996 document which cannot have been amended then. Sections 197-200 of the Charities Act 2011 (which replaced the identically worded s.64 of the Charities Act 1993) stipulate that no amendment can be made to a charitable company's objects clause, trustee benefit provisions or dissolution provisions without the prior written consent of the Charity Commission. I know that we did not give our consent to any such amendments, so no such amendments can validly have been made. Whatever the status of the 2011 Articles of Association lodged with Companies' House (i.e. whether there is a resolution), the charity's objects are those stated at clause 3 of the 1996 Memorandum of Association, the limits to benefits to trustees are those defined at clause 5 of the 1996 Memorandum of Association (and are no wider than that), and the charity's dissolution provisions are those at clause 8 of the 1996

Memorandum of Association. Any part of the 2011 document (even if there is a resolution) which conflicts with these should be disregarded, and the trustees are required by law to operate in accordance with the original clauses 3, 5 and 8.

I look forward to hearing from you concerning a suitable meeting date, concerning how the trustees intend to fulfil their legal responsibilities as explained in this e-mail and my e-mail of 18 April and clarification of what the trustees understand the governing document to be. Given the importance of these issues, an early response would be appreciated.'

23 April 2012

The chair of the charity e-mailed, stating that the trustees were trying to do the right thing, that they were aware that not everything was presently correct and saying that the trustees would welcome a meeting with the Charity Commission.

15 June 2012

Minutes re: regulatory meeting

Arun Arts (AA) (1061163)

15 June 2012, 11:35am

AA:

Hazel Latus
Peter Baldwin
Pat Dillon
Margaret Bristow
Jenny Brown
Richard Holden

Charity Commission (CC):

Nigel Geary-Andrews (NGA)
Stephen Roake (SR), minutes

1. AA has experienced a tricky period of upheaval and uncertainty following the resignation of three trustees en masse. The new (current) trustees are learning new points.
2. Half of the current AA trustees are also directors of RCL, the company that carries out the day to day operations of the centre.
3. NGA explained the Commission aims to put the charity on the right footing going forward, not criticise past mistakes.
4. NGA set out the key contents of his two advisory emails, accepting that some of the proposed considerations were big steps for the charity to take. The trustees indicated they were happy to take the Commission's advice.

5. **NGA suggested there are a series of steps to be followed, and offered to provide a flow diagram to illustrate this point.** The trustees should not get ahead of themselves and must start from scratch – what is the best way to run the centre?
6. There are three likely options for AA: (1) AA undertakes all of the work in house; (2) certain activities such as the café are run by a wholly owned trading subsidiary, which may or may not be the existing RCL company; (3) AA pays a contractor to run certain aspects of its activities. It is for the trustees to decide which course of action to take – this decision should be based on what is in the best interests of the charity.
7. NGA outlined that the trustees of AA cannot assume that RCL is the best organisation to run the centre. A decision on this must be taken before any steps to create agreements. The trustees of AA who are also directors of RCL must not be involved in the decision making process on this matter as they are conflicted – they must withdraw from the discussions (though they can provide the unconflicted trustees with relevant information).
8. However NGA did add that there is nothing to stop a person being both a trustee and a director, though there should be a majority of trustees of AA who are not directors, and majority of directors of RCL who are not trustees.
9. **The trustees agreed to produce a COI policy.** NGA suggested talking to local voluntary organisations and the council for further advice.
10. People acting in both roles need to consider which entity they are acting for and ensure that they act solely in its best interests. This has not happened previously and lines have been blurred. Even when it appears that AA and RCL have the same interests conflicts must still be managed – the entities have distinct interests.
11. NGA reiterated the importance of setting out an agreement between AA and any subsidiary company, whether or not this was RCL. The trustees agreed to address this. If the company was RCL the existing shareholders would need to transfer their shares to AA – this was agreed by the trustees. Any agreement would need to involve both parties (i.e. AA and RCL) taking their own independent legal advice, and ensuring that conflicts were managed. Currently there is no agreement between AA and RCL which could allow RCL to act as it pleased. An agreement is needed to protect all parties.
12. AA is hoping to recruit 3 additional trustees to take their number to 9.
13. NGA set out the CC's view on trading subsidiaries and primary purpose trading. It may be beneficial for the charity to use a company to undertake the café activity for example. Any agreement needs to be written and include details of how the profits are shared. The trustees need to consider which activities are charitable and which are to raise money. **NGA agreed to send a link to the relevant guidance.**

14. Currently RCL pays money to AA and is required to request additional money from AA.
15. The RCL shares held by three of the AA trustees constitute an unauthorised trustee benefit – the shares do have a value, even if this has not been realised so there has technically been a breach of trust. The trustee benefit is prohibited by the charity's governing document. However in this situation the CC will not be taking the matter further – we want to sort out the large problems facing the charity and no actual benefit has occurred.
16. In 2011 the CC was sent a new governing document by AA, without a resolution making the changes, and without consent being given for changes to the objects, dissolution and trustee benefits clauses. Therefore the correct current document is from 1996. The trustees accepted this point and agreed to work with the CC to update their governing document.
17. One of the trustees provides maintenance to AA. Normally this is for free, but sometimes payments are made to the trustee to cover the cost of materials etc. The trustees checked if this was acceptable. NGA clarified that it was not – only payments to solicitors and accountants is currently allowed. New documents will be needed. AA has enough members who are not directors to vote on a proposed new benefits clause.
18. AA asked about old accounts, some of which cannot be located. NGA confirmed that the CC expected no further action if documents could not be found.

Meeting closed at 13:30

22 June 2012

A further e-mail sent from the Charity Commission to the charity's trustees. This included the flowchart referred to in minutes of the meeting, and some further guidance as follows about managing conflicts of interest, which was as follows:

'I have referred to the development of a conflicts of interest policy. As well as considering the Charity Commission's [conflicts of interest guidance](#), I would recommend the trustees take specialist advice. I would have thought the town council's conflicts of interest policy could be adapted, but the trustees may also like to consider contacting CVS Arunwide, who have an office on Clarence Road, Bognor Regis, PO21 1LD, and whose telephone number is 01243 864220. The CVS's website is <http://cvs-arunwide.org.uk/>.'

The flowchart is included as a separate document.

The Charity Commission concluded its letter by stating that it was considered *'there is sufficient advice and guidance in this e-mail, and previous e-mails, to enable the trustees to take the steps necessary to resolve the problems at the charity and to prevent a recurrence of those problems. However, we will*

contact you in January 2013 to check how the charity is progressing, and offer any further advice if needed.'

22 June 2012

The Charity Commission wrote to the complainant and stated:

'Our case relating to this charity has now been concluded and as the person who alerted us to many of the problems at the charity, I am updating you about the outcome.

Following your correspondence, I wrote to people connected with the charity to establish the facts. Following a close examination of the information I received, I concluded that there were problems at the charity which needed to be resolved. As you will recall from previous correspondence, the Commission only acts when it is proportionate (in terms of seriousness and our own resources) for us to do so.

We concluded that the charity's present trustees have been validly appointed, and we decided that rather than explore at length the reasons why the problems arose, we would provide detailed advice to the trustees in order that the charity could be put onto a correct footing. This we have done in correspondence and at a meeting with the trustees.

We will continue to maintain contact with the trustees to check on progress, and we hope it is able to move forward and be successful.

Thank you for bringing these issues to our attention, and enabling us to work with the trustees to resolve them.'

This concluded the case.