

E-mail from Charity Commission 03/02/11

Dear Mr Baldwin,

Arun Arts Company Limited - 1061163

Thank you for re-submitting your e-mail, now that the overdue 2009 annual return has been submitted.

Please accept my apologies that we have not responded before the trustee meeting scheduled for 2 February 2011 as requested.

As our published guidance concerning trading subsidiary's states a charity trustee cannot be paid for his or her services as an employee of the charity's trading subsidiary unless either:

- the governing document of the charity specifically provides for this; or
- there is some other specific authority, such as an order from the Charity Commission.

For your convenience I have enclosed a link to this guidance and our guidance on trustee expenses and payments which are both available to download on our website:

<http://www.charitycommission.gov.uk/Publications/cc35d.aspx#16>

<http://www.charitycommission.gov.uk/Publications/cc11.aspx#7>

Having reviewed the charity's memorandum and articles held on our records, last amended on 14 February 1997 I can confirm that there is a prohibition at clause 5 which precludes any trustee of the charity being employed by a trading subsidiary.

However in 2008 we received an application to remunerate a trustee of the charity, Mr Cunard for office space provided to the charity. On 20 March 2008 we gave the necessary prior consent of the Charity Commission to insert the following sub clause:

"(7) of such other payments as the Charity Commission authorise."

I have attached a copy of this outgoing letter to this e-mail.

Subject to this amendment being made by resolution ratified by the charity's membership that letter could be taken as the Commissions consent to remunerate Mr Cunard on the terms outlined in the declaration and application originally submitted.

We have not received a copy of any resolution to add this clause to the charity's memorandum. In order to ensure our records are up to date provide a certified (that is signed) copy of any resolutions passed since our consent was provided to make this amendment.

Provided this amendment was made by special resolution of the charity's members at the time the charity's memorandum includes a conditional power to pay trustees, subject to our authorisation.

In order to consider providing this authorisation for a trustee of the charity to be employed by the trading subsidiary we require the following information:

- A completed application for employment from the trustees who do not stand to benefit from the employment. This is accessible from the following link: <http://www.charitycommission.gov.uk/Library/guidance/csd1381c.pdf>
- A full job description
- Clarification of any particular skills the trustee has which make them suitable to carry out this role
- Details of any open recruitment procedure for the role.

On receipt of this information we will consider authorising the payment.

Please note that if a resolution was not passed after our outgoing letter dated 20 March 2008 any payments made to Mr Cunard were un-authorised and could be open to legal challenge from a third party.

If a resolution has not been passed we would appreciate clarification whether Mr Cunard received this un-authorised payment.

Secondly if clause 5 was not amended we would now need to consider the application as detailed above but before any authorisation could be provided we would first need to provide our prior consent to amend clause 5 of your memorandum.

Please respond with the clarification requested by Thursday 17 February 2011.

I hope this is of assistance.

Very often the quickest way to answer any enquiries that you have is to look on our website, especially the [frequently asked questions](#) covering the main issues that we are being asked about. You will also find the latest news, together with our publications and guidance. You can even [sign up for email updates](#).

Yours sincerely

Dan Holliday

Charity Commission Direct