

Charity Commission for England and Wales

Llanfair Waterdine Relief in Need Charity (503441)

Decision about whether the Charity Commission should make a Scheme following consideration of representations from members of the public

1. The issue

- The Llanfair Waterdine Relief in Need Charity is governed by a Charity Commission Scheme dated 13 October 1977. The Scheme also governs four other charities. The charities own several pieces of land.
- The Scheme contains a provision, clause 34, which prevents trustees from taking or holding any interest in property belonging to the charities other than as a trustee.
- Between April and June this year, the Commission received complaints about the management of the charities, including complaints that the trustees were renting land from the charities in breach of clause 34.
- In June, the trustees asked the Commission to amend this clause to allow trustees to rent the land from the charities. They explained that the land is rented by public auction by a firm of chartered surveyors specialising in agricultural grass letting. The trustees told us that there are six trustees, five of which are farmers. They believe that bidding at public auction is transparent and that allowing the trustees to bid will help to increase the amount of interest in the land and consequently raise the rent value.
- In response, the Commission made a draft Scheme under section 16(1) of the Charities Act 1993. The draft Scheme amends clause 34 to the effect that it would permit the trustees to rent the charity's land but only with the consent of the Commission. This means that the trustees would need to approach the Commission on each occasion that one of them is the winning bidder.
- The draft Scheme was published from 26 September until 2 November. Two of the three people who complained about the charity were sent a copy of the draft.
- The Commission received two representations objecting that the proposed Scheme is an attempt to seek authorisation for an unnecessary practice which has already damaged the reputation of the charity.

2. How my decision was made

I have reviewed all the Commission's papers relating to this matter, including:

- The correspondence from the trustees
- The complaints
- The representations

I have discussed the issues with the Commission's nominated in-house legal adviser.

The factual points in this decision have been checked with two of the trustees.

3. My decision

Further work is needed before the Commission can decide whether or not to make a Scheme.

Areas where further work is needed:

- The trustees have not made a sufficient case that allowing them to bid for (and therefore potentially rent) the land will raise the value of the rent. The Commission has not been provided with any evidence of this. For example, how many people other than trustees typically bid at the auctions? What would be the impact on the value of the rent if the trustees didn't bid?
- The trustees informed the Commission that the charity gets grants from the Rural Payments Agency and Environmentally Sensitive Areas Scheme. They said that this accounts for half the income. One of the rules for this is that the land must be used for grazing. Presumably these grants would also be available if non-trustees rent the land. This grant income was not mentioned on the trustees' formal application for the Scheme.
- The charity advised that one of the pieces of land is surrounded by a farm owned by one of the trustees, who has always rented this land and pays a fair price for it. The charity also advised that it is rare for anyone else to put a bid in. It is unclear why this is so. The charity has clarified, during this decision review, that in 2010 the trustees agreed to pay a wayleave to the land owner (to compensate for the damage caused by traffic over the access land) if a third party rented the land. Two of the complainants consider that a long-established right of way exists to this piece of land. Given that we have been informed that one particular trustee always rents this land and it is rare for anyone else to put a bid in, it is unclear what the benefits are of continuing to auction this land.
- It is arguable from the information provided by the charity that all the trustees who are farmers could have a potential conflict of interest, or a perceived one, concerning the renting of the charity's land. The Commission was informed that five of the six trustees are farmers. Technically, there may be an argument that those trustees who did not win a piece of land at auction are not in fact conflicted for that specific piece of land. The charity has clarified, during this decision review, that only one piece of land is the subject of the concerns, and that only one trustee bids for this land. The charity has also clarified, during this decision review, that they consider a trustee is only conflicted if they bid for the land. The Commission needs to further engage with the charity on the extent to which the trustees (current and future) might have an interest in bidding for and renting the charity's land.
- It is unclear whether the awarding of a grazing licence to a trustee would represent a connected party disposal under section 36 Charities Act 1993. This is an important point as it determines whether an Order from the Charity Commission would be required (following the making of the Scheme) or whether the consent could be provided by email or letter. If an Order was required, then the proposed Scheme wording may need to change to reflect this. The trustees may need to seek legal advice as to whether a grazing licence is a disposal under section 36. The charity has clarified, during this

decision review, that the grazing licence is issued for a period of less than 12 months. (The Commission needs to clarify with the charity whether or not the 'grazing licence' constitutes a lease or a licence in property law. For further information, see the Commission's operational guidance, Disposals of charity interests in property, OG54 B9 paragraph 1)

Additional issues

- Given the apparent broad conflict of interest (i.e. five of the six trustees being farmers); it is difficult to see how the trustees can objectively manage the assets of the charity. Even if they could, a perceived conflict of interest may still exist which could be damaging to the charity's reputation. Depending on the further information obtained from the trustees when the Commission further consults with them about the draft Scheme, it may be worth exploring whether the charity should move to a position where it can form at least a quorum of trustees who had no interest (perceived or real) in renting the charity's land.
- This further information should also be used to assess the level of private benefit arising to the trustees. It may be necessary to consider whether the organisation currently operates in furtherance of its charitable purposes for the public benefit.
- The draft Scheme is unclear in its intention. As drafted, the amended clause 34 appears to apply to all of the charities governed by the existing Scheme. However, the Scheme purports to be only in relation to the Relief in Need Charity. This needs to be clarified and made consistent in the event that the Commission makes a Scheme.
- In the event that a Scheme is made, the Commission needs to advise the trustees that when land is auctioned trustees should make it a condition of sale that if the purchaser of the land turns out to be a connected person, the sale will be conditional on the Commission's consent being obtained. The trustees should therefore warn prospective buyers that there may be a delay in completing the sale should they turn out to be a connected person. Also, the Commission might not necessarily agree to provide consent. (Further details, including the definition of a connected person can be found in the Commission's operational guidance, Disposals of charity interests in property, OG54).

Conclusion

If the Commission was to make the Scheme now, without exploring the issues raised above with the trustees, it would mean that those issues would have to be addressed at the point when a trustee had made a winning bid and approached the Commission for consent. These issues should be addressed now rather than postponed until the Commission's consent is needed for a specific piece of land.

Ray Mitchell
Senior Manager
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