

COMPLIANCE

Inquiry Report

Mohiuddin Trust

Registered Charity Number 1105585



A statement of the results of an Inquiry into the Mohiuddin Trust (formerly known as Al Ehya Trust).

Published on 16 June 2010.

The Charity

1. Mohiuddin Trust, formerly known as Al Ehya Trust¹ ('the charity') was incorporated as a company on 8 March 2004. It is governed by a Memorandum and Articles of Association of the same date, as amended by special resolutions on 10 May 2005 and 25 November 2009. It was registered as a charity on 23 August 2004.
2. Its charitable purposes are to:
 - 1) advance education and training for the public benefit anywhere in the world;
 - 2) relieve poverty anywhere in the world; and
 - 3) establish or to secure the establishment of schools, colleges or other institutions in particular for the purposes of education and health improvement and to maintain and manage them in furtherance of these objects anywhere in the world.
3. The charity provides financial and educational support to four particular educational establishments in the earthquake areas of Kashmir and Pakistan. The vast majority of the charity's income came from donations received in response to appeals made by the charity on Asian Digital television channels during 2005 and 2006.
4. In the financial year ended 31 March 2009, according to the charity's annual accounts its total income was £212,049 and total expenditure was £149,600. Its net assets were recorded as £447,843.

Source of concern

5. In May 2006 the Commission received complaints from members of the public alleging that a charity trustee had misappropriated a substantial sum of charity money and was personally benefitting from charitable funds.

¹ The charity changed its name from Al Ehya Trust to Mohiuddin Trust on 12 November 2009

Commission inquiry

6. An investigation called a Regulatory Compliance Case was opened to examine further the concerns. During the investigation the Commission identified further issues of concern and as a result decided to open a statutory inquiry using its powers under section 8 of the Charities Act 1993.

Issues

The inquiry ('the Inquiry') looked at the following issues:

- a) the potential misapplication of the charity's funds including:
 - funds being used for the benefit of a company connected with two of the trustees; and
 - possible unauthorised payments to one of the charity's trustees;
- b) the trustees' role and general financial management of the charity;
- c) conflicts of interest in relation to a loan to a company connected with two of the trustees; and
- d) the trustees' conduct and relationship with the Commission during the Inquiry.

Timescale of inquiry

7. The Inquiry was opened on 26 February 2007 and the Commission's substantive investigations concluded on 30 September 2009. The Inquiry was closed with the publication of this report on 16 June 2010. The level of co-operation the Commission received from the charity fell below the standard expected from trustees and significantly contributed to the length of the Inquiry. Some additional time was given to the trustees to enable them to have sufficient time to consider the draft report and respond. However, even taking that into account, the Commission was unable, in this particular case, to meet its normal target of publishing the statement of the results of the Inquiry within three months of the conclusion of its substantive investigation.

Findings

The potential misapplication of the charity's funds

Funds being used for the benefit of a company connected with two of the trustees

8. The Inquiry established that in March 2006 the trustees authorised a transfer of £150,000 from the charity's bank account to the account of Al Ehya Digital Television Limited, trading as Noor TV, a private company. Two charity trustees at the time, including the Secretary were directors of Noor TV. The Inquiry found that the transfer was a loan to Noor TV. The Inquiry established that before the charity's loan to Noor TV it was a dormant company and was told that Noor TV was unable to obtain further funding from its own bank. The trustees informed the Inquiry that the loan was made as an investment by the charity. The loan was secured against the equipment of Noor TV and a floating charge over the books, debts and assets of Noor TV. The Secretary told the Inquiry that before making the investment the trustees had taken advice about whether the charity had the power to make the loan. The trustees informed the Inquiry that the advice received was that the loan was in the best interests of the charity. The only way the charity could have done this without the authority of the Charity Commission was as an arms-length investment arrangement and providing conflicts of interest were managed (see further paragraph 28).
9. The Secretary informed the Inquiry that the advice was from the same individual who had assisted the trustees with the registration of the charity but that this person was not a solicitor or financial adviser. The Inquiry obtained a statement from this person. He confirmed that he had assisted with the registration of the charity but told the Inquiry that he did not provide any advice about the loan as he was not qualified to provide financial advice.
10. The trustees were asked about their decision-making process prior to making the loan. The trustees maintained their view that the loan was a good investment for the charity. However, they were unable to demonstrate that this was a good investment for the charity to make or that they had gone through a proper process in making their decision.
11. The Inquiry requested copies of any contract or agreement between the charity and Noor TV governing the terms of the loan. The Inquiry established that there was a written agreement dated 31 March 2006 between the charity and Noor TV.
12. Under the terms of the agreement, the loan was due to be repaid in full, including interest, two years after the loan was made. The loan was not repaid by the date set out in the agreement. The Inquiry established that Noor TV did not have the funds to repay the loan on the due date. It had indicated this in writing to the charity on 25 April 2008 with a request for an extension of six months to repay the loan. This was agreed by the trustees. The loan was subsequently repaid in three instalments between September and December 2008.
13. Noor TV did not pay the interest required under the terms of the loan agreement. The trustees told the Inquiry that they had agreed to an offer from Noor TV to provide the charity with free advertisements and two free charity appeals per year for five years in lieu of interest owed. This decision is recorded in the minutes of a trustee meeting dated 9 December 2007. The trustees provided evidence in the form of a letter from Noor TV dated 15 September 2008 to show that the value of the offer was equivalent to or better than the sums owed under the terms of the loan agreement.

Possible unauthorised payments to one of the charity trustees

14. The Inquiry found evidence of payments amounting to £100,000 from the charity's bank account to the personal bank account of the Secretary. The Secretary told the Inquiry that due to the charity's financial difficulties, he had paid some of the charity's costs from his own funds and was being reimbursed. This was confirmed by the other trustees. The majority of these costs were payments sent overseas for charitable projects via a Sheffield-based business. The charity's records included invoices from this business confirming receipt of these funds. However, the Inquiry could not trace from the charity's records any original supporting documentation to confirm there was a debt owed by the charity to the Secretary. On 11 February 2009 the charity's solicitors provided the Inquiry with invoices relating to these payments which the Secretary had subsequently prepared for completeness of the charity's records.
15. The Inquiry requested from the Secretary copies of the cheques drawn from his personal bank account to confirm that he had made payments on the charity's behalf. The Secretary provided two copy cheques relating to payments amounting to £10,000 leaving an unaccounted balance of £90,000. Despite further requests from both the Commission and the trustees' solicitors no further copy cheques were provided. The Inquiry was later informed that the charity had thoroughly investigated the unaccounted balance of £90,000 and the charity was satisfied that this balance had been applied for the purposes of the charity.
16. The minutes from a trustee meeting dated 20 March 2006 refer to a payment of £11,154 made to the Secretary. There was at least one other payment totalling £7,500 made by the Secretary around the same time. However, the minutes from the trustee meeting dated 20 March 2006 do not refer to this payment.
17. The Inquiry made clear to the trustees that they are responsible for all expenditure of charitable funds and have to account for how the charity's funds have been applied. Although there were reports from overseas establishments referring to the expenditure of Rupees equivalent to £90,000 mentioned in paragraph 15 above there were no supporting invoices or receipts. As there were only some records to record the funds the Secretary paid went overseas for charitable work, the charity's records and financial audit trials were inadequate at the time the payments were made.

The trustees' role and general financial management of the charity

18. At the time the Commission's Inquiry opened there were three trustees. These were the Secretary, one trustee who spent large periods of time overseas and a third trustee who the Inquiry established had little or no involvement with the management and administration of the charity. The Inquiry was informed that only the Secretary and one other trustee acted in the management and administration of the charity. Article 4.2 of the charity's governing document requires there to be a quorum of three trustees to enable valid decisions to be made. As a result of these deficiencies in the governance of the charity, three additional trustees were appointed to the charity on 20 October 2007.
19. The Inquiry established that at times, for example from April until October 2007, the Secretary was the only person controlling the day-to-day administration of the charity. He informed the Inquiry that the only other trustee acting at that time regularly spent long periods of time abroad overseeing the charity's overseas projects. Leaving the Secretary largely unsupervised to oversee the day-to-day affairs of the charity meant there was a weakness in the governance of the charity.

20. The trustees were in default of their legal obligation to submit annual accounts (section 45 Charities Act 1993). At the beginning of the Inquiry, in February 2007, the charity had not filed annual accounts for the financial year ending 31 March 2006. During the course of the Inquiry the charity also failed to submit the annual accounts for the financial years ending 31 March 2007 and 2008 on time. The Inquiry established that the charity was also in default of its obligation to submit annual accounts to Companies House.
21. The charity's auditor qualified the charity's accounts for the financial year ended 31 March 2006. At a meeting with the auditor on 8 January 2008, the auditor told the Inquiry that he had difficulty in obtaining sufficient information from the trustees to complete the accounts. Due to insufficient records he had been unable to identify and report on restricted or unrestricted funds. The auditor had issued a management letter setting out these concerns which the trustees confirmed had been received. The Secretary told the Inquiry that the auditor had all the charity's records. However, the auditor only held records for the financial years 2006 and 2007. The charity's records for the financial year 2005 were missing. Charity trustees of a charitable company are under a legal obligation to keep accounting records for a minimum of three years². The Inquiry was concerned that there were no other records in existence for the charity.
22. The Inquiry undertook inspections of the charity's books and records in January 2008 at the offices of the charity's auditor and on 9 February 2009 at the offices of the charity's solicitors. Copy bank statements and cheques gathered by the Inquiry did not match the information shown on the cheque stubs in the charity's records. The cheque stubs indicated payments had been made to businesses but the matching copy cheques from the bank showed these payments as being made to the Secretary. At least one cheque was marked as cancelled when it had been paid to the Secretary. The Secretary had responsibility for the completion of the cheques and was unable to give a satisfactory answer as to why the cheques had mismatching information. The trustees subsequently accepted that there were weaknesses in the record keeping and prior to the closure of the Inquiry gave assurances that the poor record keeping would be rectified.
23. There was also at least one blank cheque held in the cheque book which had been pre-signed by the Secretary. It is a dangerous breach of financial control over expenditure from charity funds if blank cheques are signed in advance³. The practice of signing blank cheques is a neglect of the duty of care owed by trustees.
24. The Inquiry found that cheque payments from the charity's funds made to the Secretary as mentioned in paragraph 22 above included the signature of the Secretary who received those funds. Cheques made payable to a nominated signatory should not be signed by that person.
25. The charity's policies and procedures obtained by the Inquiry and dated August 2006 stated that bodies in receipt of funds from the charity will be required to submit monthly reports on how funds have been expended. Reports were not obtained on a regular basis. The Secretary informed the Inquiry that from September 2007 onwards the trustees would receive monthly reports from the charity's overseas projects. The Inquiry found that after 2007, reports continued to be received only on an infrequent basis. There was no evidence in the charity's records to clarify what actions had been taken by the trustees to ensure that this happened. Part of the action taken by the trustees prior to the closure of the Inquiry was to ensure that these reports were received on a regular basis.

2 Charity trustees of unincorporated charities are under a legal obligation to keep accounting records for a minimum of six years.

3 See further the Commission's guidance *Internal Financial Controls for Charities (CC8)*

26. In November 2007, the Secretary made a request to the Commission for authority for the release of £40,000 from the charity's bank account as this amount was urgently required for the charity's overseas work. However, as the charity could provide no information to support this expenditure it was declined. The Inquiry requested a breakdown about how the funds would be used. No breakdown was provided.
27. On 6 December 2007 the charity's auditor drew the Inquiry's attention to a particular invoice which the auditor was concerned was not genuine. On 9 February 2009 the Inquiry asked the trustees to explain this invoice as the name and address shown on the invoice could not be traced. The trustees were unable to provide any explanation and requested a short time to investigate this. At a later meeting on 17 February 2009, and in a letter dated 24 March 2009, the Inquiry was informed that the invoice was used as a costing analysis and no funds had left the charity's account. The invoice had been submitted to the auditor by the Secretary in error. The Inquiry was concerned that this invoice was submitted in error and is a further example of poor governance in the charity at this time.

Conflicts of interest

28. The Inquiry found that at the time the loan was made the trustee body comprised of three trustees. Two of the trustees were directors of Noor TV. This meant they were conflicted when making the decision concerning the loan. The third trustee, who the Inquiry was advised was not taking an active role in the administration of the charity, was the only non conflicted trustee. The conflicted trustees were not able to satisfactorily demonstrate to the Commission how their conflict of interest was properly managed to enable the trustees to make an investment which was solely in the interests of the charity. In his interview with the Inquiry on 16 March 2009 the only other trustee who was acting at the time the Inquiry was opened, admitted that he did not appreciate he was also in a position of conflict in respect of the loan to Noor TV.

The trustees' conduct and relationship with the Commission during the Inquiry

29. Throughout the Inquiry, the level of cooperation received from the charity fell below the standard expected by the Commission. For example, on several occasions beginning with the Secretary's interview on 17 September 2007, the Inquiry requested the contact details of the person whom the trustees had stated had advised them on the loan to Noor TV. This information was eventually received with the Secretary's letter dated 18 July 2008. It took the Secretary over eight months to provide a copy of the agreement relating to the loan between the charity and Noor TV.
30. The Inquiry held a meeting with the trustees on 9 February 2009. The Inquiry questioned the content of a bank deposit slip which showed a deposit into the charity's account of £50,100. The sum of £50,000 formed part of the loan repayment from Noor TV. The charity's bank statements show a deposit of £100 on the relevant date but no deposit of £50,000. The Inquiry asked the Secretary to explain the discrepancy. The Secretary confirmed he had completed the deposit slip and that the original intention was to deposit £100 but he subsequently amended this to include the cheque from the company for £50,000 which was to be deposited at the same time. He told the Inquiry that when he had deposited these cheques he was later contacted by the Noor TV's bank account manager (the charity and Noor TV both use the same branch of the same bank) as Noor TV had insufficient funds in its account. The Secretary stated that the account manager's recommendation was that the bank should hold the deposit slip and cheque for £50,000 until the company had sufficient funds in its account to enable the cheque to clear.

31. At a meeting with the Commission held on 17 February 2009, the trustees' solicitor stated that the Secretary had spoken with someone at the bank he regularly dealt with rather than the account manager. The bank had initialled the deposit slip on 10 February 2009 to clarify that there had been an error during the paying in process. The solicitor, in his letter dated 11 February 2009 clarified that the bank had amended and initialled the counterfoil.
32. The Inquiry obtained a statement dated 11 February 2009 from a representative of the bank who stated that the bank had not held a cheque for £50,000 and that any cheque or cheques would have been deposited on the day they were presented at the bank.
33. The Secretary resigned the day after the Inquiry met with the trustees on 9 February 2009. Up until his resignation, almost all of the Commission's contact and correspondence with the charity had been with the Secretary.
34. The minutes of trustee meetings held on 5 April 2007 and 9 December 2007 highlight one of the other trustee's concerns about the failure of the Secretary to adequately address in a timely manner the causes for concern highlighted during the Commission's Inquiry. Minutes from trustee meetings held on 8 February and 20 September 2008, by which time additional trustees had been appointed, also highlighted the concern of all the trustees and the urgent need for the Secretary to respond to the Inquiry's requests for information.
35. During the Inquiry the Secretary stated that one of the original trustees had resigned. This was supported by minutes from a trustee meeting dated 17 June 2006 which stated that this person no longer wished to act as a trustee. The Inquiry contacted this trustee who provided a statement to say he had not resigned nor given any indication that he wished to resign and that he was never contacted about or invited to trustee meetings.

Conduct of Inquiry

36. Throughout the Inquiry, the trustees and their advisers were informed of the causes for concern and the outstanding information required. The Inquiry liaised with the charity's bank and auditors to clarify the concerns and assess the needs of the charity and its beneficiaries. The Inquiry later worked closely with the newly appointed trustees and the charity's solicitors to bring the Inquiry to a conclusion.
37. The Inquiry conducted an inspection of the books and records of the charity in January 2007 at the premises of the charity's auditor and later at the premises of the charity's solicitors.
38. Concerns regarding the bank deposit slip, referred to in paragraph 31 above were reported to the police on 24 February 2009.
39. The Inquiry provided regulatory advice and guidance to the trustees and the charity's solicitors about the steps required to put the management and administration of the charity back on a proper footing. The trustees acted on this advice and prior to the closure of the Inquiry proactively took a number of steps to introduce enhanced policies and procedures along with changes to personnel and the charity's registered address. The trustees continued to update the Commission when additional changes to the management and administration were introduced, including an overall action plan.

40. Statements were obtained from representatives of the charity's bank and the person who had advised the trustees at the time of the registration of the charity to substantiate a number of the causes for concern.
41. The Inquiry interviewed the Secretary on 28 September 2007. It interviewed the other trustee connected to Noor TV on 16 March 2009, along with one of the trustees appointed on 20 October 2007 on 16 March 2009.

Conclusions

42. Serious breaches of financial controls had taken place in this charity.
43. The conflicts of interest of the two trustees connected to the TV company were not properly managed. The trustees did not follow a robust decision making process when considering the loan to the TV company. The trustees did not obtain appropriate professional advice and the TV company did not pay the interest due. The Inquiry concluded that the trustees had been unable to demonstrate that the decision to enter into the loan was a good investment to make in the best interests of the charity nor that proper processes had been followed.
44. The financial governance of the charity and its record keeping was poor. Also, there were weaknesses in the internal financial controls and procedures. The charity's records were misleading in respect of certain cheque payments it made.
45. The trustees did not comply with the terms of the governing document in relation to the minimum number of trustees required to form a quorum and when discussing or agreeing to the loan to the connected company. For other periods of the Inquiry there were an insufficient number of trustees acting in the management and administration of the charity to properly make other decisions.
46. As a result, the evidence gathered during the Inquiry showed acts of mismanagement in the administration of the charity on the part of the two trustees connected with the TV company. However, the trustees have taken steps to resolve the problems. They have appointed additional trustees, made improvements to the charity's management and administration and agreed to an action plan to make further appropriate changes which will help secure its effective governance going forward. The improvements required and agreed by the trustees will be monitored and assessed by the Commission in a future visit to the charity.

Regulatory action taken

47. On 19 December 2006 and at various other times during the course of its Inquiry the Commission issued Orders under section 9 of the Charities Act 1993 to various financial institutions and funding bodies for information and documentation relating to the charity.
48. On 13 March 2007 the Commission, as a temporary and protective measure, used its powers under section 18(1)(iv) of the Act to restrict transactions over the charity's bank accounts without the approval of the Commission.
49. On 5 September 2007 the Commission used powers under section 8(3)(c) of the Act to direct the two trustees to attend the Commission's offices to give evidence on the causes for concern identified.
50. On 6 December 2007 the Commission used its powers under section 8(3) of the Act to direct the Secretary to provide specified information and documents.
51. On 19 June 2008 the Commission used its powers under section 8(3) of the Act to direct five trustees to attend the Commission's offices to give evidence on specific matters.
52. On 25 March 2009 the Commission discharged its Order of 13 March 2007 restricting the charity's bank accounts being satisfied that the assets of the charity were no longer at risk.
53. The Commission provided specific regulatory guidance and advice to the trustees on the concerns identified at the outset of the Inquiry and matters which arose during the course of the Inquiry.

Impact of Commission intervention

54. The charity's governance and financial management will be restored by the actions of the trustees implementing the regulatory advice provided by the Inquiry for the benefit of the charity and its beneficiaries.

Resources applied

55. The Commission adopted a multi-disciplinary team working approach on this case which involved both accountancy and legal advice and casework management. Throughout the Inquiry the Commission worked closely with the trustees' auditor and in the latter stages of the Inquiry the newly-appointed solicitors.

Actions required of the trustees

56. The charity appointed additional trustees to ensure the unmanaged conflicts of interest could be resolved and that the quorum provisions in the governing document could be complied with.
57. The trustees have agreed that a number of improvements and changes to the management and administration of the charity will take place, which will ensure that practices such as decisions made at inquorate meetings, insufficient financial controls, poor record keeping, failure to produce and submit accounting information and pre-signing blank cheques will not take place in the future. The trustees must continue to review the charity's governance to ensure it is robust. The new body of trustees were advised to take steps to ensure that they were satisfied that the charity's funds were properly applied in furtherance of the charity's purposes and if not whether they should consider whether any such funds need to be repaid. The Commission will monitor the situation and will expect the trustees to report on their progress and the steps they have taken or propose to take within 6 months.

Issues for the wider sector

58. Trustees have and must accept ultimate responsibility for directing the affairs of a charity, and ensuring that it is solvent, well-run, and delivering the charitable outcomes for the benefit of the public for which it has been set up. Charity trustees must not let their personal interests conflict with their duty to act in the best interests of their charity.
59. Charity trustees should ensure there are robust and adequate financial controls in place to properly manage and protect the property of the charity. An effective charity has the financial and other resources needed to deliver its purposes and mission, and controls and uses them to achieve its full potential. The trustees are not acting in accordance with their duty of prudence if accounting records are not maintained, cheque payments do not match the information retained on cheque stubs and if blank cheques are signed in advance.
60. Charitable funds must only be used to further the charity's purposes. If charitable funds have been misused then charity trustees are expected to take reasonable steps to identify what has happened to the funds and consider what course of action it is reasonable, seeking professional advice as appropriate. Trustees may approach the Commission for formal advice under section 29 of the Charities Act 1993.
61. If charity trustees knowingly or recklessly provide the Commission with information which is false or misleading in a material particular they may be guilty of an offence under section 11 of the Charities Act 1993.
62. When considering certain complex, significant or high risk decisions it is difficult to see how trustees could discharge their legal duties without taking and properly considering professional advice as they would be exposing the charity and its property to significant risk by failing to do so. Donors and beneficiaries have a right to expect trustees to take appropriate steps to protect property of the charity or any property coming to the charity.

63. An effective charity is run by a clearly identifiable board or trustee body that has the minimum number of trustees as required by its governing document and whom have the right balance of skills and experience, acts in the best interests of the charity and its beneficiaries, understands its responsibilities and has systems in place to exercise them properly. The board or trustee body should ensure that the charity's committees have clear and appropriate delegated authority to carry out their designated roles in delivering the charity's purposes. In the absence of any delegated authority all decisions concerning a charity are taken by the board or all of the trustees acting collectively and as a team.

Paragraph	Issue	Charity Commission guidance and relevant legal obligation
8, 9 and 10.	Obtaining appropriate professional advice	The Essential Trustee: What you need to know (CC3)
11 - 13	Loans to other organisations	The Hallmarks of an Effective Charity (CC10)
14, 15 and 16	Unauthorised payments to trustees	Trustee expenses and payments (CC11)
18 and 19	Insufficient trustees	The Essential Trustee: What you need to know (CC3),The Hallmarks of an Effective Charity (CC10)
20	Submission of accounts	Charity Reporting and Accounting: The Essentials April 2009 (CC15b)
21 22 - 27	Record keeping Internal Financial Controls	The Essential Trustee: What you need to know (CC3) Internal Financial Controls for Charities (CC8)
28	Conflicts of Interest	The Hallmarks of an Effective Charity (CC10)



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