

Inquiry Report

Lower Central Gardens Bournemouth

Registered Charity Number 299739



A statement of the results of the class inquiry into double defaulter charities in particular Lower Central Gardens Bournemouth (registered charity number 299739).

Published on 18 November 2013.

The Class Inquiry

On 20 September 2013, the Commission opened a statutory class inquiry ("the Inquiry") into charities that were in default of their statutory obligations to meet reporting requirements by failing to file their annual documents for two or more years in the last five years and met certain criteria, including that

- the charities were recently (or in the case of charities that would become part of it in due course, would be) given final warnings to comply by a specified date; and
- on the day after the specified date they were still in default (partially or otherwise).

At the point a charity met the criteria they would become part of the Inquiry. The Commission started by looking at and sending final warnings to charities with a last known income over £500,000.

The Charity

Lower Central Gardens Bournemouth ("the Charity") was registered on 26 July 1988. It is a trust governed by a Scheme, dated 13 May 2011, and the Bournemouth Borough Council Act 1985, more particularly section 29.

The Charity's objects are:

'The appropriation and use of the charity's land for public gardens for the use of the inhabitants of Bournemouth and the vicinity, and a building to be used as a public building for the purposes of Commissioners offices and board room, town hall, courthouse, assembly rooms and offices connected therewith'.

More details about the Charity are available on the Register of Charities which can be accessed through the Charity Commission's website¹.

Issues under Investigation

The Charity failed to submit to the Commission annual accounts and reports required for the financial years ending 31 March 2011 and 31 March 2012. The Charity was sent various computer generated reminders from the Commission regarding the submission of their annual accounting documents.

¹ <http://www.charitycommission.gov.uk/find-charities/>

In addition the Charity was contacted by telephone on 4 September 2013 and asked to supply accounts by 20 September 2013. Further to this the Commission wrote to the Charity with a final warning on 10 September 2013 requesting that the missing documents be provided by 20 September 2013. The Charity correspondent promised that all the outstanding documents would be provided by 30 September 2013. In these two communications, the Commission warned what would happen (that the Charity would join the Inquiry) if the Charity remained in default on 20 September 2013. The Charity had been in default of its obligations under the Act for a lengthy period of time, in respect of more than one set of documents and in spite of being sent numerous reminders.

The Charity met the criteria and became part of the Inquiry on 23 September 2013. However, in the circumstances, the Commission decided not to proceed immediately with exercising its legal power to direct the trustees to comply as it took into account the fact that the Charity had promised full compliance by 30 September, and so decided to delay the intended use of the legal powers of direction against the trustees until that date. The Charity was warned that if by that date, the Charity had not fully remedied the default, the Commission would proceed to exercise those powers against the trustees, with a proportionately reduced period of time, taking into account the 10 day period already spent, in setting the time-frame for compliance.

The Inquiry is confined to dealing with the trustees' mismanagement and misconduct² and remedying the non-compliance in connection with the annual accounting documents.

During the Inquiry the Charity filed the missing annual accounts and reports for the financial years ending 31 March 2011 and 2012 on 30 September 2013, as they indicated. The correspondent for the Charity informed the Commission on 9 September 2013 that:

"The Council's historic failure to comply with the Commissions requirements was brought to the attention of the new Head of Accountancy Services in the latter part of 2012 following the reorganisation of accountancy services at the Council in 2011/12. Clear responsibility for the production of the information has now been allocated to two accountants, who have been trained and understand the requirements of producing the accounts for the charities...

There are now specific accountant roles identified to carry out the work of producing the annual statements, as this work is established as part of their operational responsibilities, should there be any staff turnover this responsibility will be identified as part of the role so the situation of the annual accounts being neglected will not arise again in the future. Audit of the accounts is now incorporated into the Council's closedown process so again the situation of audit not taking place will not arise again."

The correspondent for the Charity also indicated to the Inquiry on 25 September 2013 that staff turnover may have led to reminders generated by the Commission being missed. The trustees of the Charity later stated that the Charity did not receive the computer generated reminders sent by the Commission.

When the Charity's missing documents were submitted, the accounts were referred for scrutiny by the Commission's accountants and any issues have been or are being followed up separately.

2 The terms misconduct and mismanagement are taken from section 76 of the Charities Act 2011. Misconduct includes any act (or failure to act) in the administration of the charity which the person committing it knew (or ought to have known) was criminal, unlawful or improper. Mismanagement includes any act (or failure to act) in the administration of the charity that may result in significant charitable resources being misused or the people who benefit from the charity being put at risk. A Charity's reputation may be regarded as property of the charity.

Conclusions

The Charity's trustees were in default of their legal obligations to file accounting information with the Commission. This was mismanagement and misconduct in the administration of the Charity and a breach of their legal duties.

The reasons the Charity gave for non compliance were not legitimate excuses. It is the legal responsibility of the Charity and the trustees to ensure that their annual accounting information has been submitted to the Commission even in circumstances where the submission of this information has been delegated to officers or staff. It is also the responsibility of the Charity and its trustees to ensure that records and information held by the Commission, and displayed on the register of charities, is accurate; this includes the details of the current trustees and contact details for the Charity. Had this been done the Charity would have received the various computer generated reminders from the Commission regarding the submission of their annual accounting documents, although the Commission is not required to provide trustees with these reminders.

As a result of the Inquiry, the Commission ensured the Charity complied with its legal obligations to submit their annual accounting information.

The Charity ceased to be part of the Inquiry when it was no longer in default of its accounting obligations. This happened on 30 September 2013 when the Charity filed the last missing documents.

The Charity also filed the relevant documents for the financial year ending 31 March 2013, ensuring they have already fulfilled their legal obligations to file accounting information with the Commission for the next year in advance of the deadline set by the Commission.

Regulatory Action Taken

The Commission provided regulatory advice and guidance about the trustees' duty to file the Charity's annual accounting information.

Issues for the wider sector

Trustees of charities with an income of £25,000 or over are under a legal duty as charity trustees to submit annual returns, annual reports and accounting documents to the Commission as the regulator of charities. Even if the Charity's annual income is under £25,000 trustees are under a legal duty to prepare annual accounts and reports and should be able to provide these on request. All charities with an income over £10,000 must submit an annual return.

Failure to submit accounts and accompanying documents to the Commission is a criminal offence. The Commission also regards it as mismanagement and misconduct in the administration of the Charity.

For those individuals who were not trustees at the initial date of default, when they became a trustee, they became responsible for making good the default.

It is important that the financial activities of charities are properly recorded and their financial governance is transparent. Charities are accountable to their donors, beneficiaries and the public. Donors to charity are entitled to have confidence that their money is going to legitimate causes and reaches the places that it is intended to. This is key to ensuring public trust and confidence in charities.

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