

Inquiry Report

Mayfair Charities Limited

Registered Charity Number 255281



A statement of the results of an inquiry into Mayfair Charities Limited (registered charity number 255281).

Published on 12 December 2013.

The Charity

1. Mayfair Charities Limited ("the Charity") was registered on 6 March 1968. It is governed by memorandum and articles of association dated 28 February 1968. The Charity has four wholly owned non-charitable trading subsidiaries:

Company	Directors
Haysgrans Property Limited	Mr BSE Freshwater Mr D Davis
Freshwater Property Management Limited	Mr BSE Freshwater Mr S I Freshwater Mr L Stempel
Metropolitan Properties Co (Overseas) Limited	Mr BSE Freshwater Mr D Davis
Gladville Limited	Mr BSE Freshwater Mr S I Freshwater Mr D Davis

2. The Charity and the above named companies make up the Charitable Group ("the Charitable Group").
3. The trustees of the Charity are Mr BSE Freshwater, Mr S I Freshwater and Mr D Davis. Mr BSE Freshwater and Mr S I Freshwater are brothers. The Freshwater family also run a wider group of companies called the Freshwater Group ("the Freshwater Group"). The Freshwater Group and, to a much lesser degree, the Charitable Group own significant residential and commercial property portfolios. The Charity's main activities as described in the 2012 Trustees Report are:

"to support the activities of religious Jewish organisations recognised as charitable by English Law both in the United Kingdom and abroad, especially those in the field of education and relief of poverty."

The Charity's entry can be found on the [Register of Charities](#).

Issues under investigation

4. In December 2011, following a proactive scrutiny and examination of the 2010 annual consolidated accounts of the Charity and its subsidiaries (“the Accounts”), the Commission questioned the trustees about a number of loans (one of which was made by the Charity itself) to a number of companies connected to the Charity and/or its trustees, including various related party transactions. It also queried how the conflicts of interest were managed. The trustees corresponded with the Commission about these. However, based on the responses provided by the Charity and the scrutiny of the Accounts, a number of regulatory concerns required further examination by the Commission in an investigation. On 11 July 2012 the Commission opened a statutory inquiry under section 46 of the Charities Act 2011 into the Charity.
5. The statutory inquiry (“the Inquiry”) was opened to investigate and resolve the following key issues:

Issue 1: How the complex network of financial arrangements between the Charity, its subsidiary companies and companies connected to the trustees worked for the benefit of the Charity;

Issue 2: Whether certain financial transactions have been managed in the best interests of the Charity;

Issue 3: Whether the trustees were regularly reviewing the relationship between the Charity and the subsidiary companies; and

Issue 4: Whether the trustees were complying with their duties and responsibilities as trustees under charity law, in particular with regard to trustee decision making and management of conflicts of interest.
6. The Inquiry closed on 12 December 2013 with the publication of this report.

Findings

Issue 1: How the complex network of financial arrangements between the Charity, its subsidiary companies and companies connected to the trustees worked for the benefit of the Charity

7. The Charity’s Accounts highlighted that the Charity, its subsidiary companies and companies within the Freshwater Group had entered into a number of high value transactions with each other. The Commission was unable determine the exact amounts flowing to and from the Charity in the Accounts, nor whether these amounts were in fact for loans, services or other financial arrangements related to the Charity’s activities.
8. The Inquiry sought to establish what these transactions were, why they had been entered into, if they were in direct furtherance of the Charity’s objects and whether the overall outcome of the arrangements was such that the Charity was in fact benefitting financially and that its interests had been sufficiently protected.

9. In October 2012 the Inquiry met with the trustees and their advisers ("the October meeting"). The trustees explained how the Charity, the Charitable Group and the Freshwater Group operate and interact. The trustees explained that the Charity was set up to receive donations from which the trustees would make various grants to charitable causes. It was established that the Charity's income is derived from rentals from property assets and investments, receipts and donations received from individuals and companies within the Freshwater Group.
10. The property assets are recorded in the Charity's Accounts as having a value of £33,945,000. The properties are rented out (residentially and commercially) at market rate and the Charity uses the income this generates, together with other donations regularly received from the Freshwater Group, to make donations to charitable causes. The Charity's Accounts state that in the financial year ending 2010 the Charity made donations totalling £5,983,000 to over 600 charitable causes.
11. The trustees also explained that the Charity has been given and continues to be given investment assets and income from the Charitable Group and Freshwater Group. These assets have included the issued share capital of Freshwater Property Management Limited ("FPM") which was previously a subsidiary of Highdorn Co Ltd ("Highdorn"), a company within the Freshwater Group, and was gifted to the Charity in 1985. The trustees explained that the gift was made to enable the company, at the time, to donate its profits to the Charity without tax being deducted at source.
12. The trustees informed the Inquiry that the structure of many of the transactions highlighted by the Commission were as a result of the business the subsidiary companies carry out. One of the Charitable Group companies (FPM) and one of the companies from the Freshwater Group (Highdorn) provide management services to properties held within the Freshwater Group and the Charitable Group.
13. Highdorn and FPM, as part of the management services they provide, collect rents and arrange for repairs/maintenance to be carried out. However, they only charge fees for the services provided in respect of properties held by the Charity, if the Charity is capable of reclaiming those fees from the tenant. It was also established that as a result of its relationship with the Freshwater Group the Charity has access to professional advisers and administration services that are not charged back to the Charity.
14. The trustees explained that at any one time, should a snapshot be taken of the balances between the Freshwater Group and the Charitable Group companies, as happens when the annual consolidated accounts are prepared, Highdorn and FPM may hold rental income due to the Freshwater Group and the Charitable Group companies which own the properties. Similarly, the same companies may owe Highdorn and FPM amounts in respect of expenditure incurred and management services provided in relations to the properties. The trustees explained that the balance sheet alone was therefore not an appropriate method of understanding the full financial picture or solvency of the Charitable Group.
15. The trustees further explained that the complex nature of the relationships between the Charitable Group and the Freshwater Group was as a result of the natural evolution of the business relationship between them. As stated above, FPM was previously a subsidiary company of Highdorn and at that time provided a service to companies within the Freshwater Group. Highdorn was the company which inter alia provided, and continues to provide, services to the Charity. The trustees explained that FPM continues to carry out the same activities as it did before the share capital in the company was gifted to the Charity.

Issue 2: Whether certain financial transactions have been managed in the best interests of the Charity

Loan from the Charity to Charitable Group subsidiary company

16. In 1986 the Charity made a loan of £2,903,000 to a Haysgrans Property Co Ltd (“Haysgrans”), one of the Charity’s subsidiaries. The Charity’s Accounts noted that this loan remained extant. When questioned, the trustees explained that the purpose of the loan was to allow Haysgrans to purchase a property. The loan bears interest at a rate of 8% and yields £224,000 per annum which has been paid every year to the Charity since 1986. No capital repayments have been made to date.
17. The Commission had already corresponded with the Charity in both 2001 and 2004 about this loan and the Commission accepted on both occasions that it was a reasonable investment for the trustees to make on the part of the Charity.
18. When responding to why capital repayments had still not been made, the trustees’ view was that to seek repayment of the loan would be not be tax efficient for the Charity. This, they said, was because it would be difficult for Haysgrans to repay the loan without incurring a tax liability which would be detrimental to the subsidiary company and in turn the Charity. Conversely, the Charity was receiving a healthy rate of return due to the interest payments being made yearly.
19. The Inquiry did not accept that this in itself justified the Charity not seeking repayment of the loan or at least agree when this might happen. Whilst it was evident the Charity received a return from its investment the Inquiry made clear to the Charity, as it did during the 2004 engagement, that the trustees should keep in mind that the basis on which they made the loan was as an investment and that eventually they needed to recover repayment of the capital sum advanced to the subsidiary company. Although the terms of the loan stated that the loan was repayable on demand, it was implicit in this that a demand should actually be made at some point.
20. In order to discharge their legal duties to act in the best interests of the Charity, the trustees ought to have been periodically reviewing the terms and circumstances of the loan and whether full repayment or some capital repayments should have been made, balancing that against the benefits it was receiving from interest payments at the rate paid. The trustees have confirmed that they intend to do so.

Loan from Freshwater Group connected company to Charitable Group subsidiary company

21. The Charity’s Accounts recorded that Haysgrans also owed £15 million to Metropolitan Properties Co (FGC) Limited (“MFGC”), a company within the Freshwater Group. The Inquiry sought to establish the circumstances surrounding this transaction. The trustees advised the Inquiry that had obtained a £30 million long-term mortgage advance but did not have immediate use for the funds. One of the UK clearing banks with whom the Freshwater Group held accounts offered a beneficial rate of interest on deposits, but would only accept a maximum of £15 million per company with which it holds accounts.
22. The trustees explained that Haysgrans had a pre-existing relationship with the same bank and was therefore in a position to make a substantial deposit and thereby access the same beneficial rate of interest. MFGC therefore provided Haysgrans with £15 million which Haysgrans immediately placed on deposit with the bank and subsequently paid over to MFGC the self-same amount of interest received. The trustees confirmed that Haysgrans did not require use of the abovementioned deposit facility for its own activities but it was agreed that it would receive a fee for making this facility available to MFGC. The trustees confirmed that it had been verbally agreed that Haysgrans would carry no risk of default on the part of the bank in which the funds were held.

23. The trustees informed the Inquiry that MFGC benefitted from the arrangement by £100,000 by virtue of it being able to access the better rate of interest. Of that amount, £25,000 was paid to Haysgrans as a “facility fee” for granting the connected company access to the banking facility. It was, and remains, the trustees’ view that 25% of the benefit was an appropriate figure. However no basis was provided for this calculation.
24. The £15 million was repaid to MFGC before the Inquiry commenced.
25. The Inquiry’s view was that it was difficult for the transaction to be negotiated or supervised in a truly arm’s length way given that the directors of both MFGC and Haysgrans were the same people. They were also two of the three trustees of the Charity. In light of this the Inquiry could not see how the directors could have properly managed the conflicting interests in seeking to maximise the profit from the arrangement on Haysgrans part, and in securing a low arrangement fee on MFGC part. Consequently, these conflicts may have affected any ultimate profit from Haysgrans that would flow to the Charity.
26. As far as protecting exposure to risk was concerned, the trustees confirmed that there was an agreement between the two parties that the subsidiary company would bear no risk as far as the credit risk with the lending bank was concerned. When questioned as to whether this was formalised in writing the trustees confirmed that it was not.
27. The Inquiry’s view was that this was an unusual activity for a Charity’s subsidiary to be involved with and it was concerned that the activity may have exposed the subsidiary company, and ultimately the Charity, to an unacceptable level of risk due to the lack of a formal written agreement making clear the terms and conditions of the arrangement.
28. The Inquiry was not satisfied that the trustees could demonstrate that the arrangement was supervised and monitored in a way that ensured the interests of the subsidiary company (and in turn the Charity) were being properly protected. It also concluded that the directors and/or trustees would not have been able to manage any resulting conflicts of interests or loyalty appropriately.
29. The Inquiry made clear to the trustees, during the October meeting and in subsequent correspondence, that further proactive measures would be needed to ensure that the interests of the Charitable Group are adequately protected when investments involving other members of the Freshwater Group are pursued. The trustees have subsequently agreed to appoint a trustee to the board who is fully independent and unconflicted.

Issue 3: The relationship between the Charity and the subsidiary companies

30. The Inquiry examined whether the trustees regularly assessed the relationship and transactions between the Charity and its subsidiary companies so as to ensure there was sufficient protection of the Charity’s property and interests when it was involved in any of the Freshwater Group or the Charity Group’s affairs.
31. The Inquiry established that the Charity has a Conflict of Interest policy. When asked how the trustees went about implementing the policy it was explained that *‘there’s very little decision making that needs to be done on day-to-day basis vis-à-vis subsidiaries’* and that the trustees *‘are very conscious of the possibilities of conflict and if we consider that there’s something where there might be a conflict then we simply don’t do it’*. The trustees informed the Inquiry that where a conflict has been identified steps are taken to ensure that connected companies never benefit financially from its relationship with the subsidiary companies and/or the Charity.

32. In the case of FPM and Highdorn the trustees confirmed that there is a written management agreement in place which sets out a formula to ensure that when management charges are made to Highdorn to FPM the directors (being also trustees of the Charity) do not personally profit from the arrangement. The trustees provided confirmation that this agreement is reviewed as part of the annual audits of Highdorn and FPM.
33. However in practice, given the nature and number of arrangements between the members of the Charity Group and Freshwater Group, the Inquiry was of the view that the trustees were taking a narrow view of how conflicts of interest or loyalty might exist, and therefore operate to the detriment of the Charity, in the context of the overall arrangements between the two Groups.
34. During the October meeting the Inquiry advised the trustees that they needed to periodically review the Charity's relationship with subsidiary companies and connected companies, including any written agreements, and implementation of the relevant conflict of interest policies, to see if any updates or amendments should be made, and the trustees confirmed they will do so.

Issue 4: Whether the trustees were complying with their duties and responsibilities as trustees under charity law, in particular with regard to trustee decision making and management of conflicts of interest

a) Records of trustee decision making

35. The Inquiry examined the management of the Charity and the independence of the trustees given that the trustees were also directors of a number of subsidiary companies within the Charitable Group, and of companies within the Freshwater Group.
36. The Inquiry identified that the trustees could and should do more to properly document the decisions they take. The Inquiry expected the trustees to have an adequate record of all significant decisions taken in the administration of the Charity. This includes, but is not limited to, consideration of grant applications and decisions to enter into loan arrangements and other significant transactions. The courts have developed a set of principles for reviewing decisions made by trustees, stating that trustees must:
 - act within their powers
 - act in good faith and only in the interests of the charity
 - make sure they are sufficiently informed
 - take account of all relevant factors
 - ignore any irrelevant factors
 - manage **conflicts of interest**
 - make decisions that are within the range of decisions that a reasonable trustee body could make
37. To ensure the trustees could demonstrate that these requirements have been satisfied when making key decisions, the Inquiry recommended that as a minimum the records of the Charity set out:
 - what information the trustees took into consideration when reaching their decision (including any professional advice taken);
 - what options were considered by the trustees (where applicable); and
 - how the trustees are satisfied that the decisions reached are in the best interests of the Charity.

38. Without this evidence, the trustees were likely to find it difficult to evidence proper decision making in compliance with their duties and in the interest of the Charity.

b) Management of conflicts of interest

39. There are three trustees of the Charity. Only one of the trustees is not a member of the Freshwater family and he has the role of director in three out of four of the subsidiary companies, as well as in a number of companies in the Freshwater Group. As such and given the number and nature of the transaction between the Charity, its subsidiaries and the Freshwater Group and the inherent conflicts this would give rise to the Inquiry was of the view that he was not sufficiently independent to on his own identify or manage any conflicts of interest or loyalty.

40. It is difficult to see how decisions could be properly taken and the trustees comply with their legal duties as trustees without the appointment of at least one new independent trustee who has no connection to the current trustees, the Charitable Group or the Freshwater Group.

Conclusions

41. Based upon the information viewed the Inquiry was persuaded, as had been the case in 2001 and 2004, that the complex network of financial arrangements that exist between the Charity, its subsidiary companies and connected companies is a result of the history of the Freshwater Group and that the Charity ultimately does benefit from these.

42. Given the inherent conflicts that exist due to the relationships both within and between the Charitable Group and the Freshwater Group, combined with the lack of independent trustees, the Inquiry found it difficult to see how the trustees could comply fully with their legal duties, in particular how the best interest of the Charity could be protected at all times without being influenced by the interests of the Freshwater Group.

43. With regards to the loan between the Charity and one of its subsidiary companies, in order to discharge their legal duties to act in the best interests of the Charity the trustees ought to have been periodically reviewing the terms and circumstances of the loan and whether full repayment or some capital repayments should have been made, balancing that against the benefits it was receiving from interest payments at the rate paid.

44. Whilst the Inquiry has identified the issues referred to above as matters which the Charity needs to address, including the need to appoint at least one new independent trustee, the Inquiry has not found any significant failings in the administration of the Charity.

45. During the October meeting the Inquiry advised the trustees that they needed to periodically review the Charity's relationship with subsidiary companies and connected companies, including any written agreements, and implementation of the relevant conflict of interest policies, to see if any updates or amendments should be made.

46. On decision making, the Inquiry strongly recommended that the trustees look at recording in writing all material decisions taken and the procedures used to manage any issues pertaining to conflict so that proper decision making can be clearly taken and demonstrated.

47. In order to properly manage conflicts of interest, at least one new trustee should be appointed.

48. The trustees cooperated with the Commission throughout the Inquiry and agreed to comply with these steps.

Regulatory action taken and next steps

49. Given the length of time that passed since the loan (as set out in paragraphs 16-20 above) was originally negotiated the Inquiry made clear that the trustees needed to revisit the agreement, taking fresh independent professional advice to ensure the arrangement continues to operate in the interests of the Charity and the Charity's assets are properly protected particularly should there be a risk to the solvency of the subsidiary.
50. The Commission provided regulatory advice and guidance on a number of issues related to conflicts of interest and loyalty, the need to take and demonstrate proper decision making and how to fulfil their duties more generally, particularly where connected companies and/or persons are involved.
51. In conducting the investigation the Commission held a meeting with the trustees and obtained documentation to support the explanations provided. This included the material obtained during the October meeting and information provided by the trustees and their legal advisers in correspondence.

Issues for the wider sector

52. The Commission expects trustees to make conscientious and continuing efforts to ensure that investment decisions taken by the trustees and the directors of the subsidiary companies are made in the best interests of the charity.
53. Trustees must be careful not to become committed to supporting a company in which trustees, or people connected with them, has a private interest without giving full consideration to whether:
 - the investment is appropriate for the charity and in line with its investment policy
 - any conflict of interest issues have been identified and managed; and
 - any private benefit is acceptable - in this guidance, private benefit means any benefits that a person or organisation receives from a charity other than as a beneficiary.
54. Trustees must assess whether an investment in a company in which trustees, or people connected with them, have a private interest would be appropriate for the charity. They must:
 - consider whether it is in the charity's interests to make the investment after making a fair comparison of this form of investment with other forms of investment available. This should involve an objective assessment of the company's business prospects (the suitability of the investment type or class)
 - be satisfied that the company is financially viable based on its business plan, cash flow forecasts, profit projections, risk analysis and other available information (the suitability of the investment within that type or class)
 - consider taking appropriate advice on the investment and the financial viability of the company. What is appropriate will depend on the circumstances. The cost of taking the advice is a relevant factor, and that should be proportionate to the size of the proposed investment (considering and taking advice if appropriate)
 - consider from time to time whether or not an existing investment should be retained (the review and diversification of investments).

55. Further information on this issue can be found in *Charities and Investments Matters: A guide for trustees (CC14)*, which is available on the Commission's website. Trustees must act only in the best interests of the charity and its beneficiaries, and must also act in line with their duty of care and duty to act prudently.
56. Trustees must also be alert to and actively manage any conflicts of interest. A trustee cannot receive any benefit from his or her charity without explicit authority. Trustees should not be in a position where their personal interests and their duty to the charity conflict, unless the possibility of personal benefit from which the conflict of interest arises is transparent. Transparency is achieved by requiring explicit authorisation of the benefit, and by ensuring that any particular conflict of interest is properly and openly managed.
57. It is the potential, rather than the actual, benefit from which the conflict of interest arises which requires authority. In order to avoid a breach of trust and to ensure transparency, authority is required where there is a possibility of benefit. This will avoid accusations of impropriety, which could in turn have a damaging effect on the charity's reputation. We expect trustees to be able to identify conflicts of interest when they arise and to ensure, if they receive a material benefit as a result of the conflict of interest, that the benefit is authorised.
58. Trustees should be alert to possible conflict and should have a policy on how they will deal with any conflicts which arise as a result of the work which the charity undertakes. Conflicts of interest are more likely when there are only a small number of trustees on the board, when trustees are closely related or when the charity has dealings with businesses in which the trustees have interests.
59. A policy can include guidance on the procedures to follow when a trustee is subject to a conflict of interest, such as:
- the removal of the trustee concerned from the decision making process
 - managing the conflict of interest once a decision has been made
 - recording details of the discussions and decisions made
60. Further information about recognising and managing conflicts of interest within a charity can be found in *A guide to conflicts of interest for charity trustees*, which is available on the Commission's website.
61. Charity trustees should ensure that adequate records are kept of their decisions so that they can demonstrate that they have acted in accordance with the governing document and with best practice. From time to time, trustees may have to make decisions with which other people may disagree, and which may come under very close scrutiny. In these circumstances, trustees should be able to demonstrate clearly that they had:
- acted honestly and reasonably in what they judged to be the best interests of the charity;
 - taken appropriate professional or expert advice where appropriate; and
 - based their decisions on directly relevant considerations.

62. Transparency in decision making will also ensure that there are less likely to be problems in demonstrating that a proper decision had taken place. The best way that this can be achieved is through making and keeping up to date records as well as involving fellow trustees in the process and recording the process in a formal manner.
63. Further information on **decision making** is available on the Commission's website.

