



CHARITY COMMISSION
FOR ENGLAND AND WALES

Mr Philip Riden

Sent via email only to:

chairman@chesterfieldcivicsociety.org.uk

Charity Commission
PO Box 211
Bootle
L20 7YX

T: 0300 065 1573

Your ref:
Our ref: C-018025-K6L8

Date: 4 August 2021

Dear Mr Riden,

Chesterfield School Foundation- Registered Charity 527170 ('the Charity')

I am writing further to my previous contact that informed you, firstly, that I had been allocated your complaint of 4 July 2021 (sent to the Commission's interim chair, Ian Karet) and, later, that I had begun the process of examining the relevant case files from the Commission's records and then that I had completed my preliminary reading of the records held.

I have now completed my review having considered all of the information held and having also discussed matters with the case officers who have most recently been responsible for handling the regulatory issues in connection with the Charity.

As previously advised, I have had no prior involvement in the Commission's cases concerning the Charity and the task I have conducted is to complete a Stage 1 Complaints Review in accordance with the Commission's complaints procedure, the details of which can be found here: [Complaints procedure - The Charity Commission - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/101421/complaints-procedure-the-charity-commission.pdf)

Background

Records show that you initially approached the Commission via letters dated 17 June 2017 and 6 July 2017 to request documents that we held in connection with the Charity. These requests were interpreted as requests under the Freedom of Information Act and the Commission responded to your requests by stating it did not hold the records you asked for. It also clarified, following further correspondence from you, that the records you requested were not 'public records' that required retention under the Public Records Act.

In parallel, at approximately the same time as the above correspondence was taking place, you also complained to the Commission about the Charity, via its then chair, William Shawcross (emails dated 22 and 23 July 2017).

On track to meet your deadline?

Visit www.gov.uk/charity-commission for help on filing your annual return and accounts

t: 0300 066 9197 (General enquiries)
0300 066 9219 (Textphone)

w: www.gov.uk/charity-commission

You were concerned that, in summary, the Charity's sole trustee- Derbyshire County Council ('the trustee')- had not and was not discharging its legal duties as trustee of the Charity. You alleged mismanagement and encouraged the Commission to intervene.

Having assessed the information you had provided, the Commission determined that there were potential regulatory concerns that were worthy of further enquiry and it opened a Regulatory Compliance Case to explore those concerns with the Charity via the trustee.

Regrettably, it seems that having decided to engage with the trustee, the case took some time to be allocated to a case-officer. It also took some time for the case-officer to then review the files, to determine which matters required examination with the trustee and to then raise those matters of potential concern with the Charity's trustee.

There were further delays when the trustee stated it did not receive the Commission's correspondence before it then later responded. This response took some time to analyse and by this time the allocated case-officer had departed from the employment of the Commission and the case had to be re-allocated.

Throughout this time, I can see that you were in contact with the Commission and the original case-officer appears to have done a reasonable job of keeping you informed as to progress, albeit that this was somewhat slower than you wished. You responded to the case-officer's updates and appeared to be satisfied that progress was nevertheless being made.

It is clear to me that by August 2018 the Commission had determined that it had gathered sufficient information to be satisfied on its chosen case strategy; it would seek to regularise the difficulties in the Charity that the enquiries to date had established rather than seek to continue to investigate alleged historic wrong-doing by the trustee.

You responded to the case-officer's update on this (their email dated 9 August 2018) by stating in your email (dated 12 August 2018) that, amongst other things, *'I am obviously disappointed that the Commission does not feel it can take action to rectify previous breaches of trust, but accept that this is their decision'* and also *'I am prepared to share the Commission's view that we must now look to the future, and I hope the Commission will ensure that this charity is in future administered in accordance with the scheme of 2002 and in line with similar charities'*.

The chosen case strategy continued and further enquiries were made of the trustee as the Commission looked to resolve the difficulties present. The Commission wanted to be assured on the legal status of Hurst House (given that there was a suggestion by now that it would be disposed of) and sought clarity on how the trustee intended to resolve the Commission's remaining regulatory concerns about conflicts of interest, accountability and furthering the Charity's purposes for the public benefit in the future.

In October 2018, the trustee confirmed that it did intend to sell Hurst House and that it had received a professional valuation to confirm its value. The Commission responded by stating that the trustee could proceed with the proposed sale without its permission (although the sale ultimately never happened).

The trustee also indicated that it intended to transfer its trusteeship of the Charity (and other charities it was the trustee of) to an entity called Foundation Derbyshire¹ so that it was no longer involved in the management, governance and administration of any charities.

The Commission concluded its initial enquiries in relation to the Charity in November 2018 although it is noted on file that it intended to follow-up on progress at a later date to ensure that the trustee followed the regulatory advice and guidance provided during the course of the case.

In July 2019, the Commission followed up on the previous engagement to find out what had since happened and it was informed that the trustee had now formally decided to transfer all of its charitable assets to Foundation Derbyshire.

By this time, the Commission had commenced its 'Revitalising Trusts Programme' of work to identify and support trustees of inactive or ineffective trusts to revitalise their charities and put their trust assets back to work for the public benefit in local communities across England and Wales. This work involves a partnership between the Commission and a charity called UK Community Foundations² and its affiliated local community foundations of which Foundation Derbyshire is one.

This programme of work has been very successful so far and, between 2018 and 2021, 517 inactive or ineffective charities have been identified, revitalising £51.96 million of charitable assets that were previously effectively dormant. The Commission is confident that the Revitalising Trusts Programme is a highly effective way of ensuring ineffective trusts are brought back into use by having a real impact in local communities across England and Wales.

As the Revitalising Trusts Programme considered the transfer of the Charity's assets to Foundation Derbyshire, legal complications arose regarding the title of Hurst House and these have taken some time to be addressed.

The current position is that the process of transferring the Charity's assets to Foundation Derbyshire will be completed shortly, subject to remaining legal processes running their course. The Charity will then be removed from the Register of Charities.

Your complaint of 4 July 2021

I summarise the issues of concern you have raised in connection with the Charity:

- The failure by the Charity's trustee to act in the best interests of the Charity and to discharge its duties as a trustee, resulting in breaches of trust.
- The (non-)transfer of the Charity's assets, including Hurst House, from being under the control of the trustee to Foundation Derbyshire.
- The failure by the Charity's trustee to safeguard the Charity's assets in particular Hurst House.
- The failure by the Charity's trustee to consider the sale of Hurst House to a potential purchaser identified through your efforts.

¹ Foundation Derbyshire is the operating name of 'Derbyshire Community Foundation' – Registered Charity 1039485.

² Please see: [Transfer a trust | UK Community Foundations](#).

Findings

The failure by the Charity's trustee to act in the best interests of the Charity and to discharge its duties as a trustee, resulting in breaches of trust.

1. This concern is one that you have raised on repeated occasions with the Commission and it is quite clear the level of dis-satisfaction you have had with the trustee's performance as trustee over the years.
2. Having reviewed the documents that have been provided, my assessment is that there have been indications of mismanagement within the Charity over the years. For example:
 - Late accounts and annual return submissions (for the reporting year ending 31 March 2020, the Charity's annual return was 116 days late; for the reporting year ending 31 March 2019, its annual return was 13 days late and its accounts 236 days late).
 - Failure to properly distinguish between the Charity's assets under the stewardship of Derbyshire County Council as charity trustee and the Council's corporate assets.
 - Failure to adequately manage conflicts of interest.
3. There will always be a judgement call to make by Commission staff as to how to respond to apparent mismanagement in the administration of a charity. In this instance, the Commission chose to regularise the failings so that they were resolved for the future.
4. In the absence of any bad faith by the trustee and being satisfied that there were no indications that charitable funds had been misappropriated or applied outside of the objects of the Charity (although, as stated, it appears that there had been a failure to adequately manage conflicts of interest over the years particularly in respect of funding recipients) the Commission chose not to take formal regulatory action against the trustee and my view is that this decision was within the range of reasonable decisions for the Commission to take.
5. As you recognised at the time it was communicated to you, there was certainly merit in the Commission looking to the future in this way and in taking this approach.
6. I take the view that the regulatory outcome of seeking to resolve the regulatory concerns in the ways that have subsequently been taken remains a reasonable outcome to the circumstances that have arisen.

The (non-)transfer of the Charity's assets, including Hurst House, from being under the control of the trustee to Foundation Derbyshire.

7. As set out above, it is acknowledged that the completion of the transfer of the Charity's assets to Foundation Derbyshire has taken some time but I am satisfied that the transfer remains (i) an appropriate solution to the issues that have emerged in the Charity over the years (ii) safeguards the assets for the future and ensures they can be used for the public benefit (iii) is sufficiently advanced to be satisfied it will be resolved in due course, notwithstanding the legal issues that have arisen.

The failure by the Charity's trustee to safeguard the Charity's assets in particular Hurst House.

8. It is clear that you have expressed continued concern that Hurst House has remained vacant since 2014 and in danger of disrepair. You argue that the trustee should have adopted a far more robust approach to either disposing of the asset or renting it out. You argue that because it has done neither quickly, the trustee's action (or lack of) has contributed to a loss of income to the Charity.
9. It strikes me as being rather difficult to establish what the extent of any potential loss might be on this issue. Any calculation assumes an interested party prepared to pay the market rate either for purchase or rent and I am unclear if any have existed, or would have existed had the property been marketed, for any of the vacant period.
10. Whilst an argument could be made that the trustee should have been more proactive in the discharge of its duties in determining a strategy for the property once it became vacant, it does appear to have engaged constructively with the Commission in relation to the issues present since they were brought to its attention, to have considered the options available to it to resolve the concerns that existed and to have then taken steps to first sell the property and now transfer it to another charity.

The failure by the Charity's trustee to consider the sale of Hurst House to a potential purchaser identified through your efforts.

11. You have explained in your email of 4 July 2021 to the Commission's Ian Karet that you recently approached the trustee having yourself been approached by a local businessman who wished to purchase Hurst House. You have explained that the trustee initially did not respond to you and then later that it declined to arrange a viewing of the property for your contact on the basis that it was already in the process of being transferred to Foundation Derbyshire.
12. As has been explained above, the Commission has been aware of this proposed transfer of assets to Foundation Derbyshire for some time and this strategy was chosen to resolve the regulatory difficulties that have been identified in the Charity, including by you in the analyses you have provided to the Commission.
13. You say that you '*anticipated that the county council would obstruct my efforts to find a buyer for Hurst House*' but as far as the Commission can see you have no legal standing to find a purchaser for Hurst House. In short, it is not yours to sell and I have not identified any requirement or obligation for the trustee to engage substantively with you on this issue.
14. If your contact wishes to approach the trustee with an offer to buy a property that the Charity possesses, that person is at liberty to do so.
15. Of course, if the trustee has decided to dispose of the property (which we understand it has and as we have set out in this response) the Commission would expect it to act in the Charity's best interests but we have seen nothing to suggest that it is not acting in its best interests at the present time on this specific issue. We understand that two attempts to sell the property were un-successful and that a decision was made by the trustee to then transfer the asset to Foundation Derbyshire, which does not appear to be unreasonable in the circumstances.

16. Under section 20 of the Charities Act 2011, the Commission is prohibited from becoming involved in the administration of any charity. It is not for the Commission to make a decision on whether the trustee should discontinue with its previous and now well-advanced decision to transfer its asset to Foundation Derbyshire (if indeed it is able to) in favour of an individual you have now identified.

Conclusion

I have reviewed the Commission's files and my view is that there are indications that the trustee of the Charity has not always properly discharged its duties as trustee in the past. In response, there has been a clear course of action taken to address these matters for the future and, in my view, whilst these have taken some time to be progressed, they appear to be on the cusp of resolution.

I see no good reason for the progress that has been made to be halted and for a different approach to now be taken. This letter therefore marks the conclusion of my review of the complaints you have raised.

If you remain dissatisfied with the standard of service you have received in relation to the Commission's handling of your concerns, then please contact the Commission's Records, Information, Governance and Assurance team (RIGA) on or before **4 September 2021** via RIGA@charitycommission.gov.uk and a member of that team will be able to assess whether your complaint has been handled fairly.

Please note that substantive complaint issues will not be re-visited at this stage, though if it is found that an issue within your complaint has not been handled in an appropriate manner, then it may be referred for further review.

Yours sincerely,

Chris Sladen
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Head of Proactive Casework
Charity Commission for England and Wales