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Charity Commission Inquiry into Markaz - EL Tathgheef - EL Eslami

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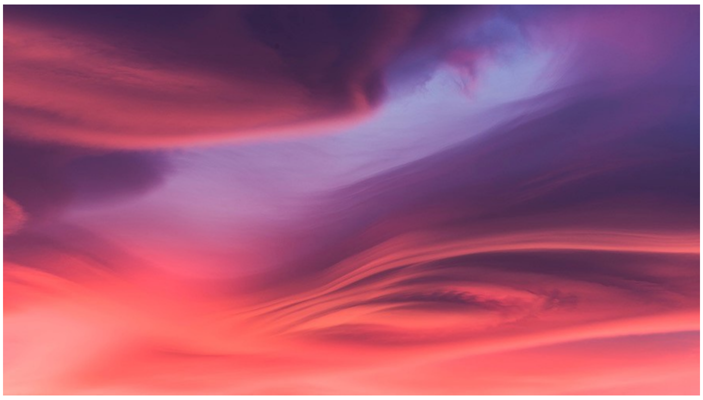

Earlier this year the Charity Commission launched an inquiry into the charity Markaz – EL Tathgheef – EL Eslami prompted by a loan of £700,000 made by the charity which was not recorded in its accounts. The inquiry unearthed failures by the trustees to manage conflicts of interest and conduct appropriate due diligence. The report highlights that, regardless of whether a loss is actually suffered by the charity as a result of the trustees' mismanagement, trustees must observe and actively manage their responsibilities in respect of the charity's finances and their own conflicts of interest.

Facts and issues

The attention of the Commission appears to have been drawn to this case by a report from the liquidators of a company named Ahlebait Limited.

That company was in the business of producing and broadcasting a special interest television channel. The liquidators' report showed the charity was one of the company's creditors, with an outstanding loan from the charity of over £700,000. This loan was not, however, reflected in the charity's accounts. The Commission was informed during its inquiry that the loan had been made in order for the charity to reach a wider audience, 'the advancement of the education of the public concerning the Islamic religion and culture' being one of its charitable objects.

In addition to the poorly documented loan, of concern was the fact that the company's sole director was the son of one of the trustees.

The Commission's inquiry covered a range of issues, including:

- the administration, governance and management of the charity by the trustees, including its financial controls;
- the transactions between the charity and the company and whether the trustees exercised due diligence in respect of these and managed their conflicts of interest; and
- whether the trustees complied with their responsibilities as trustees.

Findings

The Commission found that, while the trustees did have some written policies in place, including on cash and non-cash handling, those policies did not include sufficient financial controls or guidance as to how the trustees should monitor expenditure.

As for the loan, this had been made in instalments which continued to be advanced even though the company defaulted on the first and second repayment. The charity accepted the offer of equipment belonging to the company in lieu of payment.

Evidence was found in the charity's bank statements that monies were paid to the charity totalling the balance of the loan in repayment, so in the end the charity did not suffer financial loss. However, those monies came from donations and did not actually represent the repayment of the loan by the company, although the charity's financial accounts recorded that the loan was paid in full. Moreover, the trustees were unable to satisfy the inquiry that they had verified the sources of some of those payments.

When the company entered voluntary liquidation while still indebted to the charity, the trustees should have reported a serious incident to the Commission given the potentially significant loss to the charity.

The Commission found that there was no evidence the trustee whose son was the sole director of the company had declared his conflict of interest and withdrawn from decision making, nor was there any evidence that the trustees had considered whether making the loan was in the best interests of the charity.

To quote directly from the Commission's decision:

'A significant aspect of a trustee's legal duty to protect charitable assets, and to do so with care, means carrying out proper due diligence on those individuals and organisations that give money to or receive money from or work closely with the charity.'

The trustees failed to carry out proper due diligence, not just at the time the loan was made, but later too, when they failed to pursue the company for missed repayments and when they accepted equipment in satisfaction of repayments without any professional valuation being made.

The Commission concluded that the actions of the trustees amounted to mismanagement and/or misconduct in the administration of the Charity. However, the Commission was satisfied that there had been no financial loss to the charity as a result of making the loan.

Key lessons for charity trustees to take from this inquiry
In the report the Commission highlighted that Trustees must ensure that there are adequate financial and administrative controls in place. A Trustee has a legal duty to protect the charity's assets and carrying out due diligence on any individuals or organisations that are giving or receive money from the charity is an important part of fulfilling this duty.

This case also highlighted that the Trustees must manage conflicts of interest, and if a conflict of interest cannot be adequately managed additional trustees must be appointed or the conflicted trustee must resign. The Commission reiterated the circumstances under which Trustees are expected to make a serious incident report, such as a failed loan.

Authors

Ed Cubitt

TRAINEE SOLICITOR | LONDON

Private Client

+44 20 7597 6266

ed.cubitt@withersworldwide.com

Chloe Harris

ASSOCIATE | LONDON

Charities

+44 20 7597 6205

chloe.harris@withersworldwide.com