



CHARITY COMMISSION
FOR ENGLAND AND WALES

Inquiry Report

The James William Pemberton Trust

Registered Charity Number 1060590

A statement of the results of the class inquiry into double defaulter charities in particular The James William Pemberton Trust (registered charity number 1060590) ('the charity').

Published on 21 November 2016.

The class inquiry

On 20 September 2013, the Charity Commission ('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 2 or more years in the last 5 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
- 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. Charities that have been identified for inclusion in the class inquiry have a last known annual income of at least £150,000.

The charity

The charity was registered on 6 February 1997. It is an unincorporated charity governed by a Will and Trust Deed dated 25 October 1996.

The charity's objects are:

'To carry out works of benefit to the parish church of St Editha in Tamworth including the furtherance of religious and other charitable work of the church and also with exceptional items of expenditure in relation to restoration of the fabric of the building.'

In practice the charity makes grants to support the work of the parish church of St Editha in Tamworth.

More details about the charity are available on the **register of charities** ('the register').

Issues under investigation

The charity had failed to submit its annual accounts, reports and annual returns to the commission for the financial years ending 31 December 2010, 2011, 2012, 2013, and 2014 within the statutory deadlines. During the whole period of default, the charity was sent various computer generated reminders from the commission regarding the submission of their annual accounting documents. Although reminders were sent the charity remained in default of its obligations under the Charities Act 2011 ('the act').

In addition, an attempt was made to contact the charity by telephone on 10 December 2015, and a final warning letter was issued on the same day requesting that the missing documents be provided by 11 February 2016, and warning the charity that if it remained in default it would become part of the inquiry. The charity became part of the inquiry on 12 February 2016 because it failed to supply the outstanding annual accounting information by the deadline.

The inquiry was confined to dealing with the trustees' mismanagement and misconduct¹ and remedying the recent non-compliance in connection with the annual returns and the trustees' persistent failure to file their annual accounts and returns within the statutory deadlines.

During the inquiry the annual accounts, report, and annual return for the financial year ending 31 December 2015 became due. The majority of the outstanding accounting documents were submitted in April 2016, and the remaining documents submitted to the commission in August 2016.

A charity trustee informed the commission that the reason for not complying with their statutory filing requirements was due to all the trustees who operated the charity in 2014 (former trustees) having resigned, and not notifying the current trustees that the outstanding accounting documents had not been submitted to the commission. When the current trustees took control of the charity they found that no minutes of the previous trustees' meetings were available. The current trustees took prompt measures to rectify the position and submitted the outstanding accounting documents after they were contacted by the commission. This does not excuse the failure of the trustees to fulfil their statutory obligations.

When the charity's outstanding accounting documents were submitted, the accounts were referred for scrutiny by the commission's accountants. No issues were raised during the scrutiny.

Although the trustees had co-operated with the inquiry to supply the outstanding information, the commission had concerns about the charity's overall record for filing the accounting information on time. Despite the charity having received extensive advice and reminders in the past from the commission about the deadlines for filing annual accounts, reports and annual returns the trustees persistently failed to fulfil their statutory reporting responsibilities over a sustained period of 5 consecutive financial years, from 2010 to 2014.

The commission directed the trustees to review their procedures and implement such changes as are necessary to enable them to fully comply with their statutory responsibilities for the preparation and submission of the charity's annual reports, accounts and returns to the commission.

¹ The terms misconduct and mismanagement are taken from section 76 of the act. 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 former 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.

As a result of the inquiry, the commission ensured the charity complied with its legal obligations to submit their annual accounting information. Six sets of accounts were filed and as a result £53,495 of charitable income has been accounted for with the commission.

The commission has directed the trustees to implement such changes as are necessary to enable them to fully comply with their statutory responsibilities for the preparation and submission of the charity's annual reports, accounts and returns to the commission. The commission will monitor the trustees' actions to ensure that they comply with the terms of the direction.

The charity ceased to be part of the inquiry on publication of this report.

Regulatory action taken

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

The commission used its information gathering powers under section 52 of the act to order and obtain bank records and financial information of the charity relating to the missing years accounts. These were used in connection with the commission's scrutiny of the accounts.

The inquiry exercised powers under section 84 of the act to direct the trustees to prepare and complete the relevant missing annual accounts, reports and returns for the charity and provide copies of these to the commission.

The inquiry exercised further powers under section 84 of the act to direct the trustees, to review their procedures and practices and implement necessary changes to ensure that they fully complied with their statutory responsibilities for the preparation and submission of the charity's annual accounts, reports, and annual returns; and to also provide written details to the commission of the measures taken by the trustees.

Issues for the wider sector

Trustees of charities with an income of over £25,000 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 not greater than £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.

The commission will not hesitate to exercise its statutory powers to ensure that a charity's annual reports, annual accounts and annual returns are submitted to the commission within the statutory deadlines where trustees persistently fail to comply with their legal duties.