



## Case Report

# Didier Drogba Foundation (1135123)

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### About the charity

The charity was set up in England by professional footballer Didier Drogba in 2009 and registered with the Charity Commission in 2010. Its objects are to further such charitable purposes as the trustees may from time to time determine for the benefit of the people of the Ivory Coast. Mr Drogba had previously established La Fondation Didier Drogba in the Ivory Coast, a non-governmental organisation (NGO) working in Africa in the fields of health and education.

### Why the Charity Commission got involved

A national newspaper approached us with its concerns prior to publication of a story about the charity. It had visited the Ivory Coast and collected information about the charity, and also had an analysis of the published charity's accounts undertaken which it provided to us.

The newspaper investigators raised concerns with us regarding the operation of the charity including the potential that funds had been misapplied. From this we identified 4 key regulatory issues to consider further:

- **public trust and confidence - level of charitable activity** - that claims of the level of charitable activity by the charity either on its website, through publicity or in written material was either misleading to donors and the public or lacked transparency
- **public trust and confidence - fundraising** - that the cost of fundraising activities, specifically of 3 balls held in London, was reported under 'charitable activities' rather than fundraising and therefore was potentially misleading donors and the public
- **trustee fiduciary duties** - that funds were being held abroad and in accounts within the UK for extended periods; that it appeared these accounts attracted little or no interest; that the funds had been held for extended periods thereby not being in the best interest of the charity or meeting the general principle under trustee law requiring non restricted funds to be expended within a reasonable period
- **administration and governance** - that all the trustees of the charity appeared to live abroad thereby raising concerns of governance and of the trustees' ability to undertake their legal duties

## The action we took

Following analysis of the material provided by the newspaper's investigative journalist we determined it would be proportionate to obtain detailed financial records from the charity's bank using our powers under Section 52 of the Charities Act 2011.

We carried out specialist reviews of financial records and checked the accuracy and validity of the material provided by the charity. We assessed our findings against the relevant charity accounting standards and requirements in the Statement of Recommended Practice (SORP), the law and minimum good practice in the Commission's guidance and decided that there were some serious concerns for the trustees to address.

We then engaged with the charity regarding these concerns both through correspondence and a formal regulatory meeting with both trustees including Mr Drogba.

## What we found

### Public trust and confidence - level of charitable activity

We assessed the outcome of open source checks and evaluation of the material provided by the investigative journalist detailing the charitable activity against the financial records obtained from the charity's bank and submitted accounts.

We found that the financial records provided by the bank did not support the level of charitable activity claimed to have been undertaken by the charity in its accounts and published material.

We therefore at a regulatory meeting questioned trustees of the charity regarding the discrepancies between the charitable activity claimed to have been carried out and the (lack of) spending by the English charity.

The trustees informed us that there was also another similar organisation which was not registered in the UK - 'La Fondation Didier Drogba', a separate Ivory Coast Foundation. The trustees explained that it is this body, financed by Mr Drogba, which carried out a number of the activities highlighted on the website it runs, including the hospital building in Abidjan, rather than the English charity. The trustees stated this was why those activities were not recorded in the accounts of the English charity nor appeared in the charity's banking records.

As the regulator of charities in England and Wales, our regulatory interest is in the charity registered in England. We found that the operation of this charity and the NGO registered in the Ivory Coast appear to not to have been adequately separated. There did not appear to have been a sufficiently clear distinction between the English charity and the Ivory Coast Foundation when money was solicited, particularly at the UK fundraising events but also online.

### Public trust and confidence - fundraising

The cost of fundraising activities, specifically of 3 balls held in London was reported under 'charitable activities' rather than under 'fundraising costs' in the charity's accounts. We found that this was misleading to potential donors as the charity had not in fact yet spent the funds on charitable activities.

The trustees explained that the English charity had not in fact spent any funds on charitable activity as the charity had accumulated funds pending their expenditure on a hospital project. The charity's trustees explained to us that they had been unable to expend the funds due to the political situation in the Ivory Coast.

We saw no evidence that the trustees' policy in accumulating monies for future use, and the reasons for it, was adequately explained to donors to the English charity. We therefore consider that donors will have expected their donations to have been used for charitable purposes, not accumulated in a bank account.

We found that, because of the lack of distinction between the 2 entities, donors to the English charity may also have been misled about the activities of the charity they were supporting. This is because the impression was given that the English charity had financed the activities of the Ivory Coast Foundation, which is clearly not the case. This could affect the public's trust and confidence in the English charity.

### **Trustee fiduciary duties**

The charity had accumulated funds pending their expenditure on a hospital project. Whilst the trustees have justified why the funds have not yet been spent, they were retained in a current account in the UK, rather than a charity investment account which has lost the charity income. Trustees are under a fiduciary duty to seek the best financial return within the level of risk considered to be acceptable on charity funds that aren't being used directly by the charity.

### **Administration and governance**

We were eventually provided with translated copies of the minutes of trustee meetings, but these were not adequate records of decisions made in the administration of the charity. This raises concerns regarding the governance of the charity.

At the time of our case the charity was in breach of its governing document as there were only 2 trustees in office and not the 3 required. Furthermore the 2 trustees in place did not reside in the UK, although they had in the past, which together with the poor record keeping of the charity raised concerns regarding the trustees' ability to undertake their legal duties.

## **Impact of our involvement**

We have been able to satisfy our most serious concerns in relation to the charity by confirming that funds have not been misapplied and that all funds raised in the English charity's name have been held by the English charity. We are also able to confirm that we found no evidence of fraud or corruption on behalf of the charity.

We have issued the charity with an action plan to ensure that the outstanding concerns, particularly with regard to transparency to donors and the public, are addressed by the charity's trustees.

We will follow up with the charity to ensure that it is implemented. Our engagement has ensured that the trustees have been made aware of their duties and responsibilities in administering the charity.

A third trustee has now been appointed, however this appointment raises a question about conflicts of interest. This is because the 2 other trustees owe a duty of loyalty to the founder because they have a professional relationship with him, which could prevent them from making a decision only in the best interests of the charity. We have therefore advised that additional independent trustees are appointed by the existing trustees so that any conflicted trustees can withdraw from any decision making where the conflict of loyalty might affect (or be seen to affect) the decision.

The charity has told us that future annual reports will be improved to provide more information about the charity's activities and the accounts will comply with the Statement of Recommended Practice. The charity will also provide more clarity on which activities are undertaken by which organisation. This should clarify the relationship between the English charity and the Ivory Coast Foundation so that there is no misunderstanding.

## Lessons for other charities

1. Our recent **public trust and confidence research** highlighted that the biggest driver of trust in a charity for members of the public was the amount of donation that reached the end cause. Trustees must protect their charity's reputation and other assets, and ensure compliance with fundraising law when raising funds. They must ensure that potential donors are not misled about the activities of the charity. Further information on trustees duties regarding fundraising can be found in **Charity fundraising: a guide to trustee duties**.
2. Trustees must ensure their charity is accountable. The accounts must comply with the **Statement of Recommended Practice** (where it applies) and must accurately reflect the different expenditure categories so that all with an interest in the charity can understand accurately what has been spent on the charity's beneficiaries or purposes and what costs have been incurred in doing this. Further guidance for trustees on preparing charity accounts can be found in **Charity reporting and accounting: the essentials**.
3. Charities can benefit considerably from the influence and support of high profile individuals and many charities have agreements with patrons and supporters which can bring public attention to their charitable cause. Where individuals are involved directly with the governance of a charity there may be greater public scrutiny of that charity's activities. The Commission has the same expectations of high profile individuals as it has of any trustee.
4. Our guidance **The essential trustee (CC3)** makes clear that trustees are responsible for their charity and need to understand their role and responsibilities. Trustees need to act with reasonable care and skill. This includes holding regular trustee meetings and keeping accurate records of their decision making, whether the trustees reside in the UK or abroad.
5. Trustees must always act in the best interests of their charity - where there are conflicts of interest (including conflicts of loyalty) they need to identify, avoid or manage, and account for them (set out in our guidance **It's your decision: charity trustees and decision making**).
6. Trustees have a duty to secure the best return for funds including any being accumulated or held by the charity within the level of risk considered to be acceptable. Our guidance **Charities and investment matters: a guide for trustees** sets out the steps charities should take when considering how to invest/hold funds.