



CHARITY COMMISSION
FOR ENGLAND AND WALES

Inquiry Report

Khalsa Missionary Society

Former Registered Charity Number 1126873

A statement of the results of an inquiry into Khalsa Missionary Society (registered charity number 1126873 - now removed from the register).

Published on 24 March 2017.

The charity

Khalsa Missionary Society ('the charity') was registered on 24 November 2008. It was governed by a constitution adopted on 16 October 2008, and as amended on 7 November 2008.

The charity's objects related to the advancement of the Sikh religion in the UK, other details about the charity and its objects can be found on the [register](#).

Background to the issues under investigation

In August 2013, the Charity Commission ('the Commission') received notification from the Home Office Immigration and Enforcement Criminal Investigations Team ('HOIE') that it had commenced a criminal investigation into the charity. At that time the charity had (and continues to) sponsor visa applications, on the basis that they were bringing 'ministers of religion' to the UK who were then employed by the charity for a set period of time. HOIE advised the Commission that there was information to suggest that the charity was abusing this system in order to facilitate the illegal entry of Indian nationals to the UK for a fee. The suggestion was that the ministers of religion made monthly payments into the charity's bank account and then similar amounts were returned to them as wages. As a result of the information received from HOIE, the Commission opened a monitoring case on 23 September 2013 to maintain oversight of that investigation.

On 14 November 2013 the Commission was advised that 4 individuals had been arrested in relation to the ongoing investigation, one of whom was a current trustee of the charity ('trustee A'). While HOIE's investigation remained ongoing, the Commission took no further regulatory action so as not to jeopardise the investigation, but remained in contact with HOIE.

HOIE informed the Commission on 22 August 2014 that trustee A was to be re-interviewed and a file submitted to the Crown Prosecution Service for consideration. As this signified the conclusion of the substantive stage of HOIE's investigation and the potential for jeopardising it mitigated, a pre-investigation assessment case was opened by the Commission in order to assess the regulatory concerns arising from the use of the charity to fraudulently sponsor Indian nationals into the UK to the private financial benefit of trustee A.

Issues under investigation

On 16 September 2014 the Commission opened a statutory inquiry ('the inquiry') under section 46 of the Charities Act 2011 ('the act'). The scope of the inquiry was to examine the following:

- whether the charity was set up and registered with the Commission for an improper purpose whether the charity had been used for a non-charitable purpose and as a conduit to launder money
- whether the trustees had personally benefitted from charitable funds in breach of trust
- whether the trustees had misapplied charitable funds for an improper or criminal purpose
- whether or not the trustees had complied with and fulfilled their duties and responsibilities in the proper administration of the charity

The inquiry's role and remit did not extend to investigating or determining whether any criminal offence had been committed under UK law by any of the trustees of the charity. Those matters were dealt with by HOIE.

The inquiry closed on 24 March 2017 with the publication of this report.

Findings

1. Whether the charity was set up and registered with the Commission for an improper purpose

The Commission, by law has to register organisations that are established for exclusively charitable purposes for the public benefit. To be a charity in England and Wales an organisation must satisfy the definition of a charity. A charity must only have charitable purposes, and carry out those purposes for the public benefit¹.

The Commission registered the charity on 24 November 2008, having been satisfied that the criteria for registering a charity had been met, and that the charity was operating for the public benefit. Trustee A was a trustee of the charity from the outset.

The Commission first became aware that the charity was being potentially used to facilitate immigration fraud in August 2013 as a result of information received from HOIE, almost 5 years post registration. As a result, the inquiry considered whether the charity had operated for any charitable purpose from 2013 onwards.

The inquiry identified that the charity had been used for non-charitable purposes since 2011, but did not find any evidence that the charity had been set up and registered for a non-charitable purpose.

2. Whether the charity had been used for a non-charitable purpose and as a conduit to launder money

3. Whether the trustees had personally benefitted from charitable funds in breach of trust

¹ Sections 1, 3 and 4 of the Charities Act 2011 refers.

4. Whether the trustees had misapplied charitable funds for an improper or criminal purpose

Charity trustees must ensure that their charity operates for the public benefit, and carries out its purposes for which it was set up, and not for any other function. Trustees should also ensure that they comply with the law generally, including in relation to fraud and financial crime. Trustees of a charity are in a position of trust, and must not exploit that position.

The HOIE investigation indicated that the charity had been used as a conduit to facilitate immigration fraud, and that trustee A had been paid large sums of money by migrants in order to assist their entry into the UK and their continued stay. There were also indications that trustee A was the only active trustee within the charity and therefore played a key role in the unlawful activity².

The fact that trustee A had actively operated the charity to facilitate unlawful activity is not only evidence of misconduct and mismanagement in the administration of charity but also represents a significant breach of trust. On the basis that the Commission was satisfied that the criteria in section 76(1)(a) and (b) of the act were both met, the inquiry issued an order on 10 February 2015 suspending trustee A from acting as a trustee pending consideration being given to his removal.

The inquiry obtained bank statements for the charity's 2 bank accounts (accounts A and B) under section 52 of the act, and the inquiry examined the bank statements and was able to determine the following:

- **account A:** the statements for the period 24 November 2008 to 31 March 2010 showed the income totalled £158,123.34; with £129,399 of this being cash deposits; expenditure totalled £130,166.65, with the amount of cash expended being £67,258.60; the income increased significantly for the second period from 1 April 2010 to 6 January 2013 (when the account closed) with the statements showing income of £609,465.90; with £511,070.29 of this being cash deposits, and expenditure of £638,729.84; with £376,828.42 of this being cash expended
- **account B:** the statements for the period 17 October 2011 to 9 January 2014 (when the account closed) showed the income totalling £787,366.74, with expenditure of £784,216.74; the inquiry was not able to establish which transactions were in cash, but saw a significant amount of payments either to individuals or marked as 'salary'

The HOIE prosecution case concluded that the charity's bank accounts had been used to legitimise the employment of the ministers of religion by the charity, in so far as individuals allegedly employed by the charity made payments into the charity's bank account which was subsequently paid back to them, less an amount for tax and national insurance. This is consistent with the inquiry's findings in relation to bank account B. Though it was not possible to determine the funding streams, the majority of expenditure was to individuals, with many being noted as 'salary'. The inquiry found that the charity's bank account B had been used for a non-charitable purpose, that being for the circulation of funds in an attempt to legitimise wage payments which amounted to misconduct on trustee A's part.

The inquiry was unable to make a finding in relation to bank account A as payments were not noted as 'salary' or attributed to individuals, because the majority of transactions were recorded as being in cash. The inquiry was unable to determine whether the income and expenditure in account A had been used in furtherance of the charity's objects.

² Commission records indicated 2 other trustees, HOIE's investigation later established that neither of those individuals were aware that they were trustees of the charity, although both knew trustee A.

HOIE did not pursue their investigation into money laundering and therefore the inquiry was not able to factor that activity into its consideration of the non-charitable purposes for which the charity had been used or determine whether trustee A had used the charity's bank account for that purpose. Although it was confirmed by HOIE that trustee A had benefitted from his position in the charity, through receiving payments from individuals in relation to facilitating immigration fraud, the inquiry saw no evidence of these payments through the charity's bank accounts.

5. Whether or not the trustees had complied with and fulfilled their duties and responsibilities in the proper administration of the charity

Trustees must comply with their duties and legal responsibilities³ and in practice this means that as part of those duties trustees must:

- make sure that the charity complies with its governing document and the law, including not only charity law but other laws that apply to their charity
- ensure that the charity is accountable by complying with statutory accounting and reporting requirements

The Commission's register held details at the time that the inquiry was opened of 2 other trustees apart from trustee A, who were appointed on 4 May 2012 and 4 March 2013. The HOIE investigation had established that neither of those individuals were aware that they were trustees of the charity. As a result of that information the inquiry considered the charity's annual returns ('ARs') held in Commission records. The ARs for the 3 financial years' ending 31 March 2010⁴ through to 31 March 2012⁵ were all submitted by trustee A. The inquiry examined these records to establish what information had been disclosed, and identified that those records potentially contained false information in relation to the trustees named. Consequently, the inquiry referred the matter to HOIE to consider under the scope of its prosecution case as to whether an offence had potentially been committed under section 60 of the act⁶. Although trustee A was originally charged with the offence, this was not subsequently pursued by HOIE.

The inquiry found that at least since 4 May 2012, the charity was in breach of the provisions contained within its governing document as clause 20(7) prescribed that the minimum number of trustees to make a decision was 2. Trustee A had been in sole control of the charity and therefore was incapable of undertaking charitable activity due to being in a minority, the inquiry was not able to determine with certainty that this was the case prior to May 2012.

Clause 24 of the charity's governing document states that the trustees must comply with their legal obligations in relation to retaining full and proper accounting records and the submission of annual accounting information. Trustees are also required to complete a trustees' annual report ('TAR') within the accounts. The purpose of this written statement, is for trustees to discharge their duties in relation to public accountability, and for the public to be able to understand not only the financial position of a charity, but also what activities a charity has undertaken.

3 **The essential trustee: what you need to know, what you need to do (CC3)**, section 2 for full list of duties.

4 Received on 27 September 2011 at the Commission.

5 Received at the Commission on 19 September 2012, and 28 December 2012 respectively.

6 Section 60(1) states that "It is an offence for a person knowingly or recklessly to provide the Commission with information which is false or misleading in a material particular if the information is provided (a) in purported compliance with a requirement imposed by or under this Act; or (b) otherwise than as mentioned in paragraph (a) above but in circumstances in which the person providing the information (i) intends, or (ii) could reasonably be expected to know, that it would be used by the Commission for the purpose of discharging its functions under this Act". Section 60(2) also states that "It is an offence for a person wilfully to alter, suppress, conceal or destroy any document which the person is or is liable to be required, by or under this Act, to produce to the Commission".

The inquiry considered the accounts for the charity for the financial years 2010 through to 2012. None of the TARs contained within the accounts reflected that the charity was a registered sponsor with the Home Office assisting migrants' entry into the UK by employing individuals as ministers of religion for the charity. The Commission would expect to see such detail in the TARs in order for the charity to demonstrate transparency.

Due to the income of the charity in the 3 financial years being in excess of £25,000 but less than £250,000 the charity's accounts were required to be independently examined⁷. The inquiry found that the examination of the charity's accounts for 2010 was completed by a different accountant to those for 2011 and 2012. The inquiry issued directions under section 47 of the act on 16 November 2016 in order to establish what records had been considered by the independent examiners ('IE') and why no separate reports by them had been made to the Commission on issues of 'material significance' as required under sections 156 and 159 of the act.

In the response received on 30 November 2016, the IE for the 2010 accounts advised that the income records provided were handwritten donation receipts, and informed the inquiry that his engagement had been with trustee A. The expenses of the charity had been for wages which had all been made in cash. The IE confirmed that the amounts withdrawn from the bank correlated with that declared in the accounts, but that there had been no signatures from the employees for receipt of wages. The IE informed the inquiry that weaknesses in the internal financial controls were identified and that although recommendations for improvements were made, he had formed the view that weaknesses were not of 'material significance' warranting a report to the Commission⁸. In his view these vulnerabilities had not resulted in the loss or misappropriation of charitable funds or led to charitable funds being put at risk, and that no evidence of fraud was found.

The Commission would expect prudent trustees to act on any comments made by an IE to ensure that any accounts submitted post advice, did not contain the same deficiencies and were sufficiently transparent to be able to show and explain the charity's activities and transactions, in particular all sums of money received and expended to demonstrate that the charity was operating for the public benefit.

In the response received on 12 January 2017, the IE for the 2011 and 2012 accounts informed the inquiry that his correspondence had been with the charity's accountant. He informed the inquiry that whilst he had highlighted certain deficiencies to the charity, he had not found any areas of concern which he considered to be of 'material significance' and no report was made to the Commission.

The inquiry found that trustee A had breached his statutory and common law duties as a charity trustee, in so far as he has not complied with the charity's governing document, or charity law requirements under section 130 of the act, by not having kept sufficient accounting records to show and explain the charity's transaction for 3 consecutive financial years. Trustee A had not acted on the IEs' findings to improve the charity's financial governance and as a result had placed the charity's assets at risk.

The inquiry found that as trustee A had significantly failed to properly exercise his duties and responsibilities as a trustee that this amounted to misconduct and mismanagement in the administration of the charity. Consequently, on 7 January 2016 the inquiry exercised remedial powers under the then section s.79 (2)(a) (i)⁹ of the act permanently removing trustee A as a charity trustee, trustee, officer and agent of the charity.

7 An independent examination is an external review of a charity's accounts.

8 **Independent examination of charity accounts: examiners (CC32)** (Appendix 5 - identifying matters of material significance).

9 Section 4(2) of the Charities (Protection and Social Investment) Act 2016 substituted the wording of s.79. The amended provision came into effect on 31 July 2016.

In relation to the HOIE investigation, on 25 April 2016 trustee A pleaded guilty to 3 counts of assisting unlawful immigration between 2011 and 2013, and was sentenced to 27 months' imprisonment on 16 May 2016.

On the basis that the charity was not undertaking any charitable activity and there were no validly appointed trustees to administer the charity, the inquiry removed the charity from the register under section 34 of the act on 23 February 2016.

Conclusions

The Commission concluded that trustee A:

- had used the charity as a conduit to facilitate immigration fraud, in breach of his statutory and common law duties as a charity trustee - this amounted to misconduct in the administration of the charity
- failed to provide sufficient accounting records to the IEs' in order to sufficiently explain the charity's transactions or to demonstrate that appropriate financial controls were in place in order to protect charitable assets - the continued failure in not acting on the advice given by the IEs' and continuing to place charitable assets at risk amounted to mismanagement in the administration of the charity
- in the Commission's view, potentially false and misleading information was provided to the Commission in relation to trustees' details provided in the charity's annual returns
- did not properly discharge his legal duties as trustee under charity law to protect his charity's assets, by using the charity as a conduit to commit fraud, personally benefitting from that action - he failed to act with reasonable skill and care, and in the best interests of the charity, and placed the reputation of not only charity but charities more generally at risk

Regulatory action taken

From the outset of the inquiry the Commission liaised with HOIE in order to not only assist with their investigation but in order to progress the inquiry, this included the sharing of information under sections 54-56 of the act. The inquiry did not meet with any of the individuals listed as trustees (including trustee A) so as not to jeopardise the HOIE investigation, and maintained a 'watching brief' on the prosecution case, whilst conducting its own investigation into the regulatory concerns.

The Commission used its information gathering powers during the course of the inquiry under section 52 of the act to obtain bank records and financial information of the charity, so as to scrutinise the charity's bank accounts against the charity accounts which had been filed with the Commission.

The Commission also used its information gathering powers under section 47 of the act to obtain records and financial information from the independent examiners to the charity's accounts, so as to scrutinise the working papers considered in the course of examination of the charity accounts which had been filed with the Commission, and to obtain explanations why no report had been made to the Commission.

The Commission suspended trustee A as a charity trustee using the power available under section 76(3)(a) of the act on 10 February 2015, and reviewed that suspension bi-monthly.

Following trustee A's suspension, the Commission removed him as a charity trustee on 7 January 2016, using the power available to it under section 79(2)(a)(i) of the act.

Finally, the Commission used the power available to it under section 34 of the act to remove the charity from the register of charities on 23 February 2016 as the charity was no longer operating.

Issues for the wider sector

The abuse of charities for fraudulent purposes is unacceptable. In instances where the Commission has evidence to suggest that a criminal offence may have been committed or has evidence that may assist an ongoing criminal investigation, we will share this information, through our statutory gateway, with either the police or other law enforcement agencies.

Trustees have a legal duty and responsibility to their charity. Holding the position of trustee in name but failing to fulfil the legal duties and responsibilities of a trustee can amount to a breach of fiduciary duty to the charity or, at the very least, misconduct and mismanagement in the administration of a charity.

Trustees must accept ultimate responsibility for directing the affairs of a charity, and ensuring that it is solvent, well-run, and delivering the charitable outcomes for the benefit of the public for which it has been set up. They must act with integrity, and avoid any personal conflicts of interest or misuse of charity funds or assets. They must use charitable funds and assets reasonably, and only in furtherance of the charity's objects.

Charities have a duty to be transparent and accountable to donors, beneficiaries and the public, and must be able to account for all of their charity's income and expenditure. Additionally, registered charities are required by law to provide accurate annual returns and accounts to the Commission and to keep their information on the public register up-to-date. Trustees' duty to file accounts and the trustees' annual report (TAR) with the Commission applies to all registered charities whose gross income exceeds £25,000 per year.

Independent examiners play an important role in maintaining public trust in charities by providing an external check on the accounts for charities with an income exceeding £25,000 but below £250,000. The Commission provides **guidance to independent examiners**, this includes determining whether a matter of material significance should be reported to the Commission.