



By Email Only

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Your Ref:

Our Ref: LP/1013903/C-316912

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Dear Ms Flores

The Turk's Head Company ("the Charity") - FOI Decision Review

I am writing in response to your email of 10 January in which you asked the Commission to review the response to your request for information relating to the Charity.

You requested information about "the current status of the Turk's Head and if the investigation that was being carried out has been completed, and its recommendations".

Your request was assessed as a request falling within the provisions of the Freedom of Information Act 2000 ("FOIA").

You were informed that the Commission's investigation into the affairs and activities of the charity is complete and the charity remains a registered charity. The case closed in November 2010. The Commission withheld the information you requested about the recommendations of the investigation, citing the exemption in section 31 (1) (g) of the FOIA which states that information is exempt from disclosure if the disclosure would, or would be likely to, prejudice the exercise by the Commission of its functions for any of the purposes set out in section 31(2) of the FOIA.

The response letter went on to explain that the exemption in section 31 is a qualified exemption and so the Commission is required to balance the public interest in disclosure against the public interest in non-disclosure.

Having considered your request I have concluded that in this case the public interest lies in disclosing the information. I have therefore set out below the recommendations made to the trustees following completion of the investigation.

I hope that this information is of assistance to you. As you are aware, if you remain unhappy with the decision you may apply to the Information Commissioner (ICO) for a decision. The ICO can be contacted at:

On track to meet your deadline?

Visit www.charitycommission.gov.uk for help on filing your annual return and accounts

General Enquiries: 0845 300 0218

Textphone: 0845 300 0219

Website: www.charitycommission.gov.uk

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire, SK9 5AF

Tel: 01625 545 745

Fax: 01625 524510

Email: enquiries@ico.gsi.gov.uk

Yours sincerely



Louise Platt
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The following regulatory advice and guidance was given to the trustees of the Charity about the steps that the Commission considers the trustees need to take to resolve issues of concern about the Charity's governance, management and administration and help the trustees ensure that they comply with their legal responsibilities as trustees. Where we use the word 'must', it is a specific existing legal requirement; where it is a 'should', it is good practice.

The Charity's objects

The Charity, as with any charity, must pursue objectives and activities that are consistent with its governing document. Given the nature of the Charity's activities and priorities, and in recognition of the fact that these have evolved somewhat differently from what was apparently envisaged when the Charity was first set up, the Commission considers that it is necessary for the trustees to reconsider the declared objects set out in the Charity's governing document and to alter those objects, so as to accurately reflect the reality and to avoid the risk of complaint by the public that the Charity is not pursuing its declared objects.

The Commission acknowledges that the trustees did broach this idea with the Commission some time ago but that the Commission proposed that its investigation into the Charity's affairs be completed first, so as to avoid the risk of precipitate action being taken.

The minutes of trustee meeting on 1 February 2010 allude to the trustees' then proposal to instruct a legal adviser to deal with formal amendment of the Charity's objects, but the Commission understands that they decided not to engage that adviser owing to potential costs involved.

Now that the Commission's investigation has been concluded, it is appropriate for the trustees to reactivate its consultation with the Commission with a view to agreeing upon the wording of revised objects for the Charity.

Charitable expenditure

There is no statutory requirement for a charity to spend at least a certain proportion of its income on direct charitable expenditure. Nevertheless, it is reasonable to conclude that the trustees need to focus their attention on increasing the level of charitable expenditure.

The trustees should also familiarise themselves with the advice and guidance set out in the Commission's publication CC19 – Charities and reserves. That advice and guidance states that trustees of every charity must ensure that the charity's funds are used appropriately, prudently, lawfully and in accordance with the charity's purposes for the public benefit. The general principle of trust law is that funds received as income should be spent within a reasonable period of receipt. The holding of reserves will be authorised either by using an express or implied power to hold reserves. Trustees are justified in exercising their power to hold income reserves, whether express or implied only if, in their considered view, it is necessary in the charity's best interests.

Investment of surplus funds

The trustees must comply with trustees' legal duties with regard to investments. When exercising any power of investment trustees must follow the standard investment criteria on the suitability and diversification of investments. They must also review the investments from time to time, and take proper advice when investing or reviewing those investments. They must also comply with the duty of care except, in the case of a constitutional power of investment, where it is excluded. The trustees must ensure that their future investment decisions are informed by and supported by robust facts and safeguards, and that decisions and transactions are fully documented.

The trustees need to familiarise themselves with the advice and guidance set out in the Commission's publication CC14 - Investment of Charitable Funds: Basic Principles, which contains a link on the Commission's web site to the publication entitled 'Investment of Charitable Funds: Detailed guidance'.

Trustee meetings and Annual General Meetings

The Charity's governing document includes an express requirement that minutes should be kept of meetings of the Charity and of trustee meetings, but does not go any further in prescribing a specific style or format for the minutes. There is a section in the Commission's leaflet CC48 Charities and Meetings that covers minutes – see paragraphs 57 to 69 in particular – although I recommend that the trustees read the whole leaflet.

The trustees must ensure that the Charity complies with the provisions set out at Article 26 of its governing document with regard to the holding of annual general meetings.

Happiness at Work Ltd

Given the interest of one of the trustees in the company Happiness at Work Ltd, it is important that the trustees recognise the conflict of interests position that arises through that company being a tenant of the Charity, of which he is a trustee. It is similarly important that the trustees ensure that they comply with the requirements set out at Article 42 of the Charity's governing document relating to addressing conflicts of interest.

The trustees should familiarise themselves with the advice and guidance set out in the Commission's publication *Guidance for Charities: A Guide To Conflicts of Interest For Charity Trustees*, which can be accessed on the Commission's web site.

This guide sets out the legal and regulatory requirements in relation to conflicts of interest and offers advice to trustees on complying with these requirements. It makes the point that trustees should bear in mind that, when they are dealing with the business of their charity, their overriding duty is to act in the best interests of the charity. There may be situations in which a trustee's loyalty to the charity conflicts with their loyalty to other parties. Guidance is provided as to how to manage these situations in the charity's best interests.

The apparent intention for Happiness at Work Ltd to covenant its profits to the Charity begs the question, would it be appropriate for the Charity to acquire the company as a wholly owned, subsidiary trading company? The trustees may wish to take advice from the Charity's accountants or legal advisers in that regard.

If the trustees decide that there is merit in pursuing that option they should familiarise themselves with the advice and guidance set out in the Commission's publication CC35 - Trustees, trading and tax. Section D of that publication sets out particularly important principles and procedures in the context of the relationship that must exist between a charity and its trading company in order to ensure that the charity's interests are protected.

Accounting and financial issues:

Section 41 of the Charities Act 1993 requires charity trustees to keep proper accounting records to show and explain their charity's financial transactions for their charity. For charitable companies, the equivalent provisions are contained in section 386 Companies Act 2006. These provisions require companies to keep accounting records that are sufficient to show and explain the company's transactions so that they disclose with reasonable accuracy, at any time, the financial position of the company at that time. The accounting records must contain entries from day to day of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure takes place.

We saw only a limited part of the Charity's books and records during our visit to the Charity, and we therefore recommend that the trustees consult with the Charity's accountants with a view to ensuring that the Charity complies fully with the above requirements.

The trustees need to ensure that the Charity's accounts comply fully with the Charities' Statement of Recommended Practice (Charities SoRP). The trustees should familiarise themselves with the Commission's publication Accounting & Reporting by Charities: Statement of Recommended Practice (SORP 2005) in that regard.

Given that the trustees have opted out of an audit under Companies Act provisions they must ensure that the charity's accounts are independently examined. They should also familiarise themselves with the Commission's publication CC63a – Independent Examination of Charity accounts – 2007.

Further advice about these accounting and financial issues, if required, can be obtained by phoning the Commission's Contact Centre.

Financial reports:

The trustees should have access to accurate and up-to-date financial information to enable them to make proper decisions. Furthermore, although the Charity's governing document does not set out any specific requirements as to the frequency with which the trustees should hold meetings, in order to govern the Charity properly the trustees should hold meetings regularly.

Trustees' meetings should be used to communicate information concerning the finances and financial management of the Charity, assisted by the production of periodic financial reports.

The financial information provided at each trustee meeting should include details of the Charity's financial position and performance. The financial information should be sent to each trustee before each meeting and will typically include:

- the latest management accounts;
- a comparison of budget to actual figures;
- an explanation for variances between forecasts and what actually happened;
- details of cash flow and closing bank balances.

Other reading

The trustees might also wish to read the following additional publications:

CC3 – The essential Trustee: What you need to know

CC8 – Internal Financial Controls for Charities

CC10 – Hallmarks of an Effective Charity