

Inquiry Report

Humanitarian Coalition Aid Foundation Limited

Former Registered Charity Number 1095610
Now removed from the register



A statement of the results of an Inquiry into Humanitarian Coalition Aid Foundation Limited (1095610) and published on 20 November 2009.

The Charity

1. Humanitarian Coalition Aid Foundation Limited ("the charity") was incorporated on 4 October 2002 and registered as a charity on 24 January 2003.
2. Its objects are:
 - 1) to promote, in any part of the world, the relief of suffering from AIDS and other infectious diseases in any manner which is or may be deemed to be charitable.
 - 2) to promote, in any part of the world, the relief of illness from water-borne disease and the promotion of methods to provide clean drinking water in any manner which is or may be deemed to be charitable.
 - 3) to promote, in any part of the world, the education of the public in relation to the causes of such diseases and in relation to means for preventing their dissemination and such other ancillary charitable purposes as the Trustees may determine.
3. When operative, the charity's website stated that the charity was engaged in activity related to HIV/AIDS relief, water safety and epidemic disease relief.
4. Since its incorporation the charity has filed accounts which (other than in 2006, where an income of £3000 was recorded), show that it has received no income and that its liabilities have consistently exceeded its assets.

Source of concern

2005 concerns

5. The Commission had engaged with the charity in January 2005 to clarify whether the charity had any income and was carrying out any activities. The case was closed on 1 June 2005, with the Commission giving advice to the charity trustees that donations made by them to their charity constituted income, whether by way of donations of money or goods, and that this would have to be shown in the charity's accounts, as would any expenditure by or on behalf of the charity.

Concerns leading to the Inquiry

6. On 7 October 2005 the Commission learned that between 14 and 19 April 2004 approximately US \$151 million ("the dollar funds") had been paid in tranches, under the reference 'Bayou Securities', into an account ("the dollar account") set up under the charity's name ("the dollar transactions"). Due to concerns over the origin of the dollar funds, they were returned by the receiving bank ("the UK bank") to the remitting bank in the USA on 7 May 2004.

7. Initial research by the Commission disclosed that:
 - 7.1 Bayou Securities was the brokerage unit of the Bayou Group ("Bayou"), a Connecticut hedge fund firm;
 - 7.2 Samuel Israel III, the owner of Bayou, pleaded guilty in a US federal court to charges of conspiracy, investment adviser fraud and mail fraud relating to Bayou;
 - 7.3 In relation to an investigation concerning the activities of Bayou, the United States Attorney Southern District of New York issued a press release on 1 September 2005 stating that "Bayou transferred investor funds through various banks located in New York, London, Hamburg, back to London, and ultimately to an account in Flemington, New Jersey ..." The release continues: "In or about May 2005, the Arizona Attorney General's Office, after conducting an investigation regarding the origin of the \$100,010,673.68 then on deposit in the Flemington, New Jersey account, concluded that the funds were the proceeds of a fraudulent prime bank instrument scheme and commenced a forfeiture action and seized the funds."
8. The Commission wrote to the charity on 15 February 2006, explaining that we had concerns related to financial transactions and the continuing absence of tangible charitable activity, and asking for a meeting with the charity trustees. Although pressed, the charity would not make arrangements for a meeting. The Commission liaised with the US authorities in relation to our concerns.
9. On 3 July 2006 the Commission learnt that Companies House was proposing to strike the charity off the Register of Companies because it had failed to file its accounts and annual return for year ending 31 December 2005.

Commission Inquiry

10. Given our concerns about the dollar funds, the charity trustees' prolonged failure to engage effectively with the Commission and our previous concerns about the financial governance of the charity, an inquiry was opened into the affairs of the charity on 4 July 2006 under Section 8 of the Charities Act 1993.

Issues

11. The Inquiry focussed on:
 - 11.1 the provenance of the dollar funds;
 - 11.2 poor financial record keeping by the charity;
 - 11.3 the fundraising activities of the charity;
 - 11.4 the governance of the charity; and
 - 11.5 the activities of the charity and its future operation.

Timescale of Inquiry

12. The Inquiry was opened on 4 July 2006. The Commission's substantive investigations were concluded on 1 April 2008. The Inquiry was closed with the publication of this report on 20 November 2009.
13. The fact that other agencies and regulators in both the UK and the USA were also conducting investigations (which involved a prosecution in the USA resulting in the conviction in April 2008 of people who were not charity trustees of the charity) inevitably prolonged our own Inquiry and delayed its conclusion.
14. The need to liaise with other agencies in order to avoid prejudicing any other ongoing inquiry or proceedings (or breaching confidentiality) has also delayed the publication of this statement of the results of our Inquiry.

Findings

Provenance of the dollar funds

15. The dollar account had been set up by the charity in the charity's name following an approach by the owner of Bayou. The charity trustees allowed him, representing Bayou, to be the sole signatory on the dollar account, despite the fact that he was not a charity trustee or officer of the charity. Rupert Charles Harris ("the Trustee") and Stephen Spaulding Hickok [a charity trustee at the time of the dollar transactions and latterly the charity's Executive Director ("the Executive Director")] have confirmed that both of them *"were involved with the negotiations that have now lead to [the Commission's] enquiry"*. They also subsequently stated that *"in terms of the funds themselves [the charity] never held legal ownership which was deliberately arranged as an act of prudence by [the charity] until such time as formal legal documentation could be prepared"*. However, this was in breach of (a) their duty to ensure that all charity property is brought and remains under their joint control until it is applied for the purposes of the charity and (b) the express requirement in the charity's Articles of Association that the charity's accounts be operated by the charity trustees.
16. The Inquiry was told that it was never intended that the charity was to be the beneficial owner of the capital transferred to this account. The Trustee and the Executive Director have stated that the charity never held legal ownership of the funds. They have further confirmed that the charity was to receive a percentage of the interest generated by the capital deposited in the dollar account.
17. However, when the dollar funds were returned to the remitting bank, the interest, amounting to £24,773.00, was paid to the owner of Bayou, not the charity.
18. Other individuals who were not connected to the charity had been given signatory rights to the dollar account and other accounts held in the charity's name. The charity was unable clearly to identify, or provide adequate contact details for, these individuals.

19. The Trustee and Executive Director have stated that they assumed sole responsibility for the negotiations leading to the deposit of the dollar funds. The other charity trustees, one of whom was appointed shortly after the dollar funds had been returned, have confirmed that they played no part in the negotiations.
20. The charity received financial advice from its accountant, but only in relation to tax and accounting matters.
21. The Trustee and the Executive Director have stated that neither of them *"in our opinion . . . as Trustees of [the charity] have participated in or benefitted from any illegal transaction on behalf of [the charity] and have seen no proof to substantiate either of us being linked or associated with any person or dealings which were known to be unlawful"*. They have further confirmed that at no time have they been *"questioned, interviewed or charged with any activity whatsoever related to fraud or money laundering"*.

Poor financial record keeping by the charity

22. The Inquiry found that the charity trustees were unable to give a full documented account to the Inquiry of the dollar transactions and, in relation to these, provided contradictory information about whether or not there had been:
 - 22.1 correspondence with the owner of Bayou;
 - 22.2 correspondence with the UK bank; or
 - 22.3 any agreements in place.
23. Information received by the Inquiry shows that a number of agreements entered into between the charity and the owner of Bayou had been drawn up and signed before and during the time the dollar funds were deposited.

Other fundraising ventures pursued by the charity

24. In addition to the dollar transactions the Executive Director authorised a Swiss intermediary to raise funds on behalf of the charity by the promotion of schemes whereby very large amounts of money were to be employed for short periods in order to produce rates of return of the order of 100-400% per week.
25. The Financial Services Agency confirmed that whilst it was familiar with the concept it had never established that such schemes actually materialise and that the Metropolitan Police have issued a warning about such schemes on their website.
26. The Executive Director later wrote to the Inquiry on 18 January 2008 that the charity made no effort to encourage the Swiss intermediary after the return of the dollar funds. This is contradicted by the signed authorisation for the Swiss intermediary which was dated 25 October 2004, some five and a half months after the dollar funds had been returned.

27. The Trustee and Executive director have confirmed that no specific schemes were in fact authorised.
28. The Inquiry found no evidence to suggest that these activities generated any funds for the charity.

Governance of the charity

29. The Inquiry found that the charity trustees did not act collectively or share responsibility for the management and control of the administration of the charity. The evidence gathered by the Inquiry shows that the Trustee and Executive Director made all material decisions concerning the dollar funds, the dollar transactions and the dollar account and carried out all related activities.
30. There is no minute evidence to show that there were any meetings to discuss the dollar transactions prior to those transactions being made. The meetings that took place after the event were not attended by the other charity trustees. No minutes seem to have been made of discussions about the promotion of fundraising schemes by the Swiss intermediary.

Activities of the charity and future operation

31. Despite fundraising efforts and the claims of the charity on its website, the charity had no funds and was not carrying out any activities.
32. The charity had never received any donations over and above such funds as the charity trustees had been able to donate personally. Its only activity had been to distribute, free of charge, products manufactured by Remedy Research, a company of which the charity's Executive Director was and is a director and of which the Trustee became a director.

Conduct of Inquiry

33. The Inquiry corresponded with the charity trustees, the charity's Executive Director, and the charity's secretary and subsequently met the charity trustees and the Executive Director to discuss the Commission's concerns. As the Commission is not a prosecuting authority, the Inquiry did not investigate the charity's activities to determine whether there was evidence of fraud or money laundering and, therefore, these issues were not put to the charity trustees and/or the Executive Director during the course of the Inquiry.
34. The Inquiry made an Order on 13 December 2006 under Section 9 of the Act to obtain from the charity's accountant a copy of the advice it had given to the charity trustees relating to the proper accounting treatment of the dollar funds.
35. The Inquiry liaised closely with other UK regulators, UK and US law enforcement agencies, exchanging information relating to the concerns raised. The Inquiry also met representatives of the charity's bank.
36. The Commission's substantive investigations were concluded on 1 April 2008. Having considered representations from the charity trustees and the Executive Director, the Commission removed the charity from the Register of Charities with effect from 27 June 2008 on the basis that it had ceased to operate.

Conclusions

37. The Inquiry concluded that:

- 37.1 In light of the highly unusual nature of the proposed arrangement with the owner of Bayou, and the context of a small charity with no established income stream or track record, the charity trustees failed to take adequate steps to ensure that they were acting prudently when entering into the arrangement. In particular, they should have established the provenance of the dollar funds. They also permitted the owner of Bayou to have sole signatory rights of the dollar account and so failed in their fundamental duty to maintain control of charity property at all times.
- 37.2 The charity trustees were unable to produce any records of the arrangements or transactions and failed, therefore, to:
 - 37.2.1 comply with their duty to keep proper books and records;
 - 37.2.2 fulfil their legal duty to provide the Commission, as regulator of charities in England and Wales, with substantive information; and
 - 37.2.3 ensure that the charity was best placed to justify the arrangements and transactions.
- 37.3 The fundraising methods adopted by the charity were high risk and have not benefited the charity. Had the charity derived any income from the fundraising schemes it may have been the subject of criticism and/or legal action, so damaging the reputation of the charity and the sector.
- 37.4 Whilst the Trustee and the Executive Director remain of the view that the charity did establish the provenance of the dollar funds, given the risk to the charity in participating in the dollar transactions and providing the dollar account, they did not take appropriate professional advice on the matter and have failed to produce evidence of the steps that they took to satisfy themselves that the arrangements were in the best interests of the charity.
- 37.5 The Trustee and the Executive Director have stated that the issue of governance is of little significance because the charity was unable to raise any funds and the ability of the charity to manage funds was, therefore, never tested. However, it remains a conclusion of the Inquiry that the charity trustees did not act collectively in relation to the arrangements with the owner of Bayou or the promotion of fundraising schemes by the Swiss intermediary. No monitoring processes or subsequent assessment of the activities of the Trustee and the Executive Director were undertaken by the charity trustees in order to determine whether these activities were or had been appropriate and in the best interests of the charity.
- 37.6 As the charity had no property and was not carrying out any activities the Inquiry considered that it would not be proportionate to take action other than to remove the charity from the Register of Charities on the basis that it was not operating.

Regulatory action taken

38. The Commission exercised its statutory powers on:
- 38.1 25 October 2005 (prior to the Inquiry) to obtain copies of documents related to bank accounts held in the charity's name from the bank by Order under Section 9 of the Act;
 - 38.2 13 December 2006 to obtain information and copy documents related to the dollar transactions from the charity's accountant by Order under Section 9 of the Act; and
 - 38.3 27 June 2008 to remove the charity from the Register of Charities under Section 3(4)(b) of the Act.

Impact of Commission intervention

39. The Inquiry prevented an inactive charity with no funds and little prospect of future activity and a record of poor governance and lack of financial probity from continuing to promote itself as a registered charity by removing it from the Register of Charities, thereby:
- 39.1 reducing the risk of misleading the general public;
 - 39.2 maintaining the integrity and transparency of the Register; and
 - 39.3 protecting the reputation of the sector.

Resources applied

40. The Commission adopted a multi-disciplinary team working approach on this case before and during the Inquiry. The team consisted of investigators, lawyers and accountants. The Commission also worked closely with a number of other agencies who had an interest in the financial transactions.

Issues for the wider sector

41. The law requires charity trustees, in deciding whether to accept or refuse a particular donation, to consider which course will, taking an overall view, be in the charity's best interests. The law allows practical and ethical factors to be taken into account as long as they are ones that are likely to affect the specific interests of the charity.
42. Unsolicited donations could be suspicious, especially if the charity trustees are unable to satisfy themselves about the credentials of the people involved, or the propriety of the donation or loan. Charity trustees should take all reasonable steps to ensure that their charity is not being used as a vehicle for criminal activities, such as money laundering. Factors which may indicate that the charity has been targeted include:
 - 42.1 offers of large donations from persons unknown to the charity trustees;
 - 42.2 donations that are conditional upon particular individuals or organisations being used to do work for the charity; and
 - 42.3 offers of donations in cash, on the basis that the charity will receive interest, but that the principal will be returned to the donor at the end of the specified period (especially where the donation is to be made in one currency and returned in another).
43. Charities have a responsibility to ensure that their own reputation and the good name of 'charity' in the public's perception are not brought into disrepute by entering into high risk ventures or inappropriate activities.
44. Charity trustees are collectively responsible for the overall management and administration of a charity and must ensure that they act at all times in accordance with their governing document and in line with their duties of care and to act solely in the best interests of their charity.

Issue	Charity Commission guidance
Fraud and/or money laundering	Section 4.2 OG 96 Charities and Terrorism ¹ (website: Publications & Guidance)
Financial record keeping	CC8 Internal Financial Controls for Charities (website: Publications & Guidance)
Roles and responsibilities of charity trustees	CC3 The Essential Trustee: what you need to know (website: Publications & Guidance)

¹ This operational guidance is cited because it contains some useful references to the issue of money laundering. There is no suggestion that the charity or its charity trustees were involved in any way with terrorist activities.

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