

COMPLIANCE

# **Inquiry Report**

## **Somali Progressive Association**

Registered Charity Number 1057081



# A statement of the results of an inquiry into Somali Progressive Association (1057081). Published on 21 August 2009.

## The Charity

1. Somali Progressive Association ('the Charity') was registered on 24 July 1996 and is governed by a Constitution adopted on 17 April 1991, as amended on 15 September 2002.
2. The Charity's objects are to:
  - Promote for the benefit of the Somali community, the advancement of education and the provision of facilities in the interests of social welfare for recreation and leisure time occupation for those members of the community who have need by reason of their social and economic circumstances with the object of improving the conditions of life;
  - Relieve the members of the Somali community who are in conditions of need, hardship or distress by provision of an advice and information service; and
  - Work towards the elimination of discrimination and to promote equality of opportunity and good relation between persons of different racial groups generally and particularly those of Somali origin and other inhabitants in South Glamorgan.
3. The Charity delivers its activities to the Somali community through a 'drop in' centre. The activities it undertakes are to provide help and support to the Somali community in issues relating to employment, education, language difficulties, housing, welfare and benefit rights, and training.
4. In the financial year 31 March 2008, the charity's total income was £204,587 and total expenditure was £181,842. Its net assets were £85,596, with cash reserves of £45,384.

## Source of Concern

5. Through the Commission's compliance work it was identified that a trustee, who was also the Chair of the Charity ('the Chair'), had been declared an undischarged bankrupt, and as a result had been placed on the Individual Insolvency Register held by the Insolvency Service on 28 January 2003. In accordance with the Charities Act 1993<sup>1</sup> ('the Act'), an individual who is an undischarged bankrupt cannot act as a trustee and may commit an offence under the Act if they do.
6. On 24 July 2008, the Commission opened a regulatory compliance case to investigate the concern. Using its powers under section 9 of the Act, the Commission obtained the Charity's bank records to determine if the Chair was a signatory to the Charity's bank account, which would identify whether the Charity's assets may have been at risk.
7. Analysis of the information provided by the bank established that the Chair was a signatory to the Charity's bank account, and that there were large financial transfers being made into a bank account which was not in the name of the Charity. Additionally, the Charity had not submitted accounts and Annual Returns for the years ending 31 March 2006 and 2007. This raised serious concerns that the Charity's funds may be at risk and a statutory Inquiry was opened.

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<sup>1</sup> Section 72 & 73 Charities Act 1993.

## Commission inquiry

8. On 15 September 2008, the Commission opened a statutory Inquiry under section 8 of the Act to further investigate the serious concerns relating to the disqualified trustee and that the fact that the Charity's funds may have been misapplied or were at risk.
9. As a consequence of the concerns identified, on 16 September 2008, as a temporary and protective measure, the Commission made an Order under Section 18 of the Act, freezing the Charity's bank accounts to secure the Charity's assets until the full facts could be established.
10. The purpose of the Inquiry was to investigate whether the Chair had acted as a trustee whilst disqualified, to establish if the trustees knew the Chair was an undischarged bankrupt and had adequately fulfilled their duties and responsibilities in managing the risk to the Charity's funds.

## Issues

11. The inquiry examined whether;
  - The Chair had acted as a trustee whilst being an undischarged bankrupt;
  - The trustees had fulfilled their responsibilities with regard to managing the risk posed by a trustee being a declared bankrupt; and
  - Charitable funds had been properly applied.

## Timescale of inquiry

12. The Inquiry into the Charity opened on 15 September 2008 and the Commission's substantive investigations were concluded on 22 May 2009.

## Findings

### **Issue 1: Whether the Chair had acted as a trustee whilst being an undischarged bankrupt**

13. To establish whether the Chair had acted as a trustee whilst disqualified, in breach of the Act, the Inquiry obtained further information from the Insolvency Service and the trustees.
14. The evidence obtained was compared with information already held by the Inquiry and existing Commission records. This clearly evidenced that the Chair had actively fulfilled their duties as a trustee whilst disqualified, appearing as a named trustee on the Charity's Annual Returns, having officially signed various pieces of correspondence, and having signed cheques and the Charity's end of year accounts.

### **Issue 2: Whether the trustees had fulfilled their responsibilities with regard to managing the risk posed by a trustee being a declared bankrupt.**

15. The Inquiry contacted the Charity trustees and identified that on 21 September 2008, shortly after the initial concerns were raised, the Chair resigned from the Charity. Consequently, the trustees acted promptly to ensure that the Chair's name was removed as a signatory on the Charity's bank mandate.

16. When questioned about their vetting procedures relating to the appointment of trustees, the trustees informed the Inquiry that the Chair had not declared to them that he was a bankrupt. In addition to this, the trustees identified that they had no procedures in place to enable them to identify whether an individual was suitable to act as a trustee, nor were they aware of their responsibility to ensure that individuals such as undischarged bankrupts could not act in that capacity.

### **Issue 3: Whether charitable funds had been properly applied**

17. During the Inquiry a book and records inspection was conducted of the Charity's accounts covering the period from 1 April 2004 onwards. The results of the inspection, combined with the Inquiry's analysis of the Charity's bank records, identified a number of anomalies in the Charity's accounting records, which were as follows:
- **Independence of signatories.** The Director of the Charity, being an authorised signatory with the responsibility for day to day Charity operations, had signed the majority of the Charity's cheques, which included their own salary. The trustees were satisfied with this procedure, as the process was regularly checked by the members of their Finance Committee. The Inquiry advised that the procedure of an authorised signatory being able to sign their own salary cheque was not good practice and was open to abuse; however, there was no evidence of abuse in this case. The Inquiry provided regulatory advice to the trustees to amend their financial procedures and controls so that an independent authorised signatory should sign the cheques for the Director's salary in future.
  - **Cheques were signed by a single signatory.** The Inquiry identified that a number of cheques had been signed by a single signatory. The Charity's constitution states that two signatories should sign the Charity's cheques. The trustees agreed this was not acceptable and that there was a weakness in their procedures, they were required to review their financial controls relating to this matter.
  - **Numerous cash transactions were made from the charity's accounts.** The trustees had a system of making cash payments for volunteers' expenses, travel costs, and other events on behalf of the Charity. Although they explained that all payments had been properly accounted for, the Inquiry found that supporting documents/receipts corresponding with many of the transactions were missing. The trustees have agreed to review this system together with their overall review of the charity's financial controls.
  - **Trustee expenses.** All of the trustees had received fixed sum management allowances as their expenses. They were advised that receiving such fixed sums in this manner was unacceptable, as the payments would be regarded as remuneration to the trustees rather than claims for expenses. The Charity's constitution does not allow for them to be remunerated and expenses could only be claimed for actual costs reasonably incurred by the trustees for duties carried out on behalf of the Charity. The trustees accepted that this method of payment was not in accordance with the Charity's constitution and agreed to immediately stop this practice. The management allowances paid, as taken from the charity's accounting records are as follows: Financial Year Ending 31 March 2005 - £1,700; 31 March 2006 -£1,710 and 31 March 2007 - £2,281.

- **Non submission of accounts and annual returns for the years ending 31 March 2006 and 2007.** The trustees had failed to submit accounts and Annual Returns on time for the years ending 31 March 2006 and 2007. However, during the Inquiry the trustees supplied the outstanding documents, together with the accounts and Annual Returns for the year ending 31 March 2008. The trustees were provided with regulatory advice that charities have a duty to be transparent and accountable to donors, beneficiaries and the public. Additionally, registered charities are required by law to provide Annual Returns and accounts to the Commission and to keep their information on the public register up to date.
18. The Inquiry also addressed the concerns relating to the transfer of large amounts of money into a bank account which was not in the Charity's name. The trustees informed the Inquiry that the bank account that the money had been transferred into was the Charity's current account, but that this account had originally been set up in 1988 to receive funds relating to an early project. The current account had been given the name of the project, not the name of the Charity. However, the money was being transferred from the Charity's deposit account (which is in the Charity's name) to the current account to pay necessary expenses incurred by the Charity.
  19. Although all the transactions that had taken place between the Charity's bank accounts were genuine, this issue would not have been a cause of concern if it had been clear from the onset of the Inquiry that both accounts related to the Charity. As a matter of good practice, if the Charity wished to continue to use the current account set up in 1988 for the Charity's purposes, they should have changed the name on the account to that of the Charity, or have closed the account and transferred the funds within it to a new account in the Charity's name.

## Conduct of inquiry

20. The Inquiry examined the financial controls and management of the Charity. This was conducted through formal correspondence and a meeting with the trustees at their premises, where a books and records inspection was carried out.
21. A full analysis of all the information provided by the trustees or obtained by investigators during the course of the Inquiry was conducted to address the concerns. This included information obtained from the trustees' solicitors and through the Charity's bank, as part of the preliminary investigation. In addition, the Inquiry liaised with the Insolvency Register and Police in the furtherance of the Inquiry.
22. During the course of the Inquiry the Commission provided the trustees with regulatory advice and guidance regarding their duties and responsibilities, and on best practice, so that they would be equipped to manage the Charity effectively.
23. The trustees openly and fully co-operated with requests for information by the Inquiry, and met all timescales imposed.
24. The section 18 Order, freezing the Charity's bank accounts, was discharged on 21 May 2009.

## Resources applied

25. The Commission adopted a multi-disciplinary team working approach on this case both before and during the Inquiry. The team consisted of investigators, lawyers and forensic accountants. The Inquiry was led by investigators from the Commission's Compliance Investigations Unit.

## Conclusions

26. It is concluded that:

- There was evidence that the Chair had acted as a trustee of the Charity whilst disqualified from acting in this capacity, and may have committed an offence;
- The trustees had taken insufficient steps to ensure that the Charity's funds were not put at risk, and the Charity's reputation damaged, due to the Chair acting as a trustee whilst declared an undischarged bankrupt;
- The trustees had failed in their duties and responsibilities to ensure that the Charity had robust and proper procedures in place relating to the vetting and appointment of trustees;
- The Charity's financial controls were inadequate as there were insufficient monitoring procedures in place to enable the trustees to effectively manage the Charity's finances;
- The trustees breached the Charity's constitution by receiving fixed payments from charitable funds, which they were not entitled to, and by failing to adhere to the financial controls relating to the signing of cheques; and
- The trustees had failed to submit Annual Returns and accounts to the Commission on time, in accordance with their statutory obligations.

## Regulatory action taken

27. **Pre-Inquiry Action:** The following regulatory action was taken prior to the Inquiry being opened:

- On 3 September 2008, the Commission issued an Order under Section 9 of the Act to obtain financial information relating to the charity's bank account.

28. **Inquiry Action:** The following regulatory action was taken whilst the Inquiry was open:

- On 16 September 2008, as a temporary and protective measure, the Commission issued Orders under section 18(1)(iv) of the Act to prevent the charity from accessing funds held in the bank account without the prior approval of the Commission;
- On 30 October 2008 the fact that an offence may have been committed by the Chair was referred to the Police. The Police have been contacted to identify what progress had been made; however, at the date of publication of this report, this matter is still under investigation; and
- On 13 February 2009, an inspection of the Charity's books and records was conducted by the Inquiry.

## Impact of Commission intervention

29. The Commission's intervention stopped a person who was disqualified from acting as a trustee of the charity.
30. The trustees are now aware of their responsibilities to ensure they check the eligibility of individuals who may wish to become trustees in order to safeguard the Charity.
31. During the course of the Inquiry, the trustees were provided with extensive regulatory advice and guidance regarding its governance to ensure that they were able to comply with their legal duties towards the Charity. The trustees are now properly equipped to discharge their duties as trustees; therefore, the charity will continue to operate and provide important services to its beneficiaries.
32. As a result of the intervention the Charity is now in the process of improving its financial controls by implementing a more robust financial controls policy.

## Actions required of the trustees

33. To immediately review the Charity's financial controls and implement more robust measures to ensure that all income and expenditure is fully supported by appropriate documentation. The Commission will be monitoring the charity to ensure that it has produced this policy.
34. To take steps to consider recovery of the funds obtained by the Chair who acted as a trustee whilst being disqualified. Should the trustees not proceed with this; the Commission may consider using its own powers under section 73 of the Act to recover monies. Details of the results of the trustees' considerations on this are to be fully documented and be made available to the Commission.
35. The Charity will be subject to a monitoring visit to the charity's premises in 6 months from the date of publication of this report. This visit will review the progress made by the trustees in implementing the changes in procedure and policy as required by the Inquiry.

## Issues for the wider sector

36. Acting as a trustee whilst disqualified is a criminal offence under section 73(1) of the Act. The Commission considers it is part of the duties and responsibilities for all charity trustees to undertake all appropriate checks to ensure that a prospective trustee is both eligible and suitable to act in that capacity. If a person becomes disqualified whilst they are a trustee the Commission expects them to resign.
37. Trustees must comply with their statutory obligations to maintain accounts and records of their charity and file them with the Commission on time. In accordance with section 41(3) of the Act, charity trustees are required to keep **any** accounting records for at least 6 years from the end of their financial year. Published annual accounts are the primary means through which trustees report on their stewardship of their charities and show public accountability. At the time this Inquiry was conducted, charities with over £10,000 income or expenditure had a statutory obligation to submit accounts to the Commission, and to complete an Annual Return form within 10 months of the charity's financial year-end. This threshold has now changed to £25,000 for charities with financial years ending on or after the 1 April 2009.

38. It is advisable to have a 'pool' of people authorised to sign cheques which is greater in number than the minimum number of signatures required on the mandate. This can prevent a situation arising where insufficient signatories are available, eg during popular holiday periods, or where there is a lack of independence by the signatory signing the cheque. All people in the 'pool' must, of course, either be trustees or be authorised to sign cheques. Cheques made payable to a nominated signatory should not be signed by that person. This alone is one of the reasons why it is important to have a 'pool' of mandated signatories.
39. It is the fundamental duty of all charity trustees to protect the property of their charity and to secure its application for the objects of the charity. In order to discharge this duty it is essential there are adequate internal financial and administrative controls over the charity's assets and their use.
40. No trustee or former trustee should benefit from their position without authority which would come from the charity's governing document or, if there is no such provision in the governing document, the Courts or the Commission.

Para	Issue	Charity Commission guidance and relevant legal obligation
17.	Internal controls in charities	CC8 - Internal Financial Controls for Charities
17.	Trustee expenses	CC11 - Trustee expenses and payments
14.	Misconduct or mismanagement in the administration of the charity	CC3 - The Essential Trustee: What you need to know
17.	Submission of Accounts to the Commission	CC15 - Charity Reporting and Accounting: The essentials
16.	Appointment of trustees	CC30 - Finding New Trustees: What charities need to know



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