

COMPLIANCE

Inquiry Report

Tariqa Burhaniya D'Suqiyya Shazuliyya (TBDS)

Registered Charity Number 1041647



A statement of the results of an Inquiry into TBDS (registered charity number 1041647). Published on 13 August 2009.

The Charity

1. Tariqa Burhaniya D'Suqiyya Shazuliyya (TBDS) ("the Charity") was registered as a charity on 26 October 1994. It is governed by a Constitution adopted on 5 September 1994. It uses the working name TBDS¹.
2. Its objects are to:
 - advance the Islamic religion in accordance with the spiritual teachings of Sheikh Muhammad Osman Abdouh Al Burhany as a method which leads to Allah;
 - advance education in Islamic studies; and
 - relieve poverty.
3. Its main activity is the provision of worship facilities to the local Sufi community in South West London. In addition it also runs educational classes for children. The Charity is part of a worldwide network of Sufi organisations, which promote the teachings of Sheikh Muhammad Osman Abdouh Al Burhany. In particular, the Charity has links with the Sudanese branch of the network.
4. The Charity's declared income in its Annual Return for the year ending 6 April 2008 was £10,788 and its expenditure £9,554.

Source of Concern

5. On 23 May 2008 the Charity Commission ("the Commission") received credible information which suggested the financial information submitted by the Charity on its Annual Update Form 2007² was incorrect, as large sums of money were being transferred in and out of the Charity's bank accounts in cash.
6. As a consequence of the concerns that had been raised, the Commission was concerned that the charity may have committed an offence by providing false or misleading information to the Commission³, based on the fact that the charity's Annual Update failed to reflect an accurate picture of the charity's financial position. It was determined that further enquiries were required to establish whether the charity's assets had been misapplied or were at risk.
7. At that time all charities with an income of over £10,000 had a statutory obligation to submit their accounts to the Commission. Charities with an annual income of less than £10,000 had to submit an Annual Update Form which required trustees to provide accurate trustee details, their charity's area of operation and its income and expenditure. As a result of the potentially inaccurate representation of the financial position, the Charity appeared to fall below the £10,000 threshold.

¹ It is common practice for charities to adopt 'working names' for their day to day operations for ease of use or that better reflect their key purposes. Please see OG18 C5 for further information.

² The Annual Update 2007 form was renamed the Annual Return form in 2008.

³ An offence under the provisions of Section 11 of the Act.

8. On 6 June 2008, the Commission opened a regulatory compliance case to investigate the concerns. Using its powers under section 9 of the Act, the Commission obtained the Charity's bank account statements to verify whether its income and expenditure matched the figures put forward by the trustees in its Annual Update Form: an initial assessment identified that there were discrepancies.
9. In the financial year ended 6 April 2007, the Annual Update Form submitted by the trustees stated that both the income and expenditure of the Charity was exactly £7,500. However, analysis of the Charity's bank statements covering this period identified amongst other transactions, a single deposit of £10,000 and a single cash withdrawal of £10,000. As a result of this analysis, the Commission opened a statutory Inquiry.

Commission Inquiry

10. On the 27 August 2008, the Commission opened a statutory Inquiry under section 8 of the Act to further investigate the financial discrepancies. This case was escalated to Inquiry status as a consequence of the potential misrepresentations made by the charity, and due to the identification of several undisclosed high value cash transactions which raised concerns that the charity's assets may have been misapplied and that charitable funds were at serious risk.
11. The purpose of the Inquiry was to investigate the Charity's true financial position, its financial policies and practices and to consider if the Commission needed to take regulatory action in light of the apparent provision of false and misleading information. The Inquiry was concerned with whether the trustees were properly exercising their duties and responsibilities as trustees and had effective oversight of the Charity's finances.

Issues

12. The Inquiry examined the following issues:
 - the potential provision of false and misleading information to the Commission contained within the Annual Update forms, and the underlying reasons behind any such submissions;
 - the Charity's internal financial controls; and
 - the adequacy of the governance of the Charity.

Timescale of the Inquiry

13. The Inquiry into TBDS opened on 27 August 2008 and the Commission's substantive investigations were concluded on 27 May 2009.

Findings

Issue 1: The potential provision of false and misleading information to the Commission

14. Until 1 April 2009 registered charities with gross income in excess of £10,000 per year were required by law to submit their accounts to the Commission annually. As of 1 April 2009, the reporting threshold was raised to a gross annual income of £25,000. This applies to all charities with a financial year ending on or after this date.
15. The trustees informed the Inquiry that they had not filed any accounts with the Commission because they believed the Charity to have an income which fell below the £10,000 threshold. However, the Inquiry found that they had failed to take all of the Charity's income into consideration, including the restricted funds within a savings account⁴.
16. In the financial year ended 6 April 2007, the Annual Update Form submitted by the trustees stated both the income and expenditure of the Charity to be £7,500. The Commission's analysis of the Charity's bank statements for that year, identified amongst other transactions, both a single deposit of £10,000 and a single cash withdrawal of £10,000 within the Charity's current account. However, there were a significant credits and debits to the Charity's savings account during the same timeframe which increased the account balance by £40,499.
17. On 10 September 2008 the Inquiry met with the trustees to discuss the apparent discrepancy with the 2007 Annual Update Form. The trustees informed the Inquiry that they had not realised that they had to include their savings account as part of the Charity's income and expenditure. The Inquiry considered this explanation but was unable to reconcile it with the information obtained from the financial analysis of the Charity's bank statements.
18. The Commission provided regulatory advice and guidance on 26 September 2008 on this issue, and informed the trustees of their duties and responsibilities to accurately reflect the financial situation of the Charity. The trustees informed the Inquiry that they had taken steps to improve the charity's accounts by engaging a third party professional to provide specialist advice in this area. However, despite having been provided with advice and guidance on this matter, and having sought professional specialist advice, the trustees again submitted inaccurate information on their 2008 Annual Return Form, which was submitted to the Commission on 11 March 2009.
19. In a meeting on 30 April 2009 the trustees were asked about the apparent discrepancy with the 2008 Annual Return Form. The trustees informed the Commission that that the financial records of the charity were quite chaotic and dispersed with various individuals and they had submitted the form with inaccurate information rather than miss the submission deadline. They also advised that they had appointed an individual to resolve the difficulties the Charity faced with its accounts.

Issue 2: The internal financial controls of the Charity

20. The Inquiry found significant weaknesses in the Charity's financial record keeping and the trustees were unable to provide a satisfactory audit trail for their income and expenditure. It was also determined that large sums of cash were regularly used in the charity's transactions for which there were insufficient records to accurately account for this expenditure. Throughout the course of the Inquiry, the trustees were unable to provide a clear explanation of the charity's financial position, despite repeated requests to do so, which frustrated the conduct of the Inquiry.

⁴ Restricted funds are those which are donated to a Charity for a specific purpose and can only be used for the purpose for which they are given. These differ from unrestricted funds which trustees can spend as they see fit, as long as such expenditure is in furtherance of the charity's objects.

21. The trustees informed the Inquiry that the Charity's income is solely made up of donations from its members and a large proportion of the expenditure is for rent payments on its property. The trustees informed the Inquiry that most of their activities were based on members giving their time for free and that beneficiaries provided their own supplies for the educational classes.
22. The trustees also explained that they had been saving for some time to purchase their own property for use as a centre of worship, the money for which was being held within a separate savings account⁵.
23. The Inquiry found that the trustees operated a complex system of loans, and donations to its members, and that a number of the trustees had benefited personally from loans that were provided on advantageous terms and conditions and constituted a trustee benefit prohibited by the Charity's governing document. In addition, the trustees were unable to distinguish between loans and donations. For example, monies which had been donated to the Charity by members were repaid upon request. The Inquiry repeatedly requested information regarding the balance of the outstanding loans and the trustees' plan to secure their repayment, however these were not provided to the satisfaction of the Inquiry.
24. The Inquiry also found that the trustees had made two payments in cash of £34,000 and £12,500 to their partner organisation in Sudan. It was ascertained from the trustees that the payment of £12,500 was a donation. However, the payment of £34,000, whilst initially claimed to be a donation, was subsequently identified by the trustees to be a loan which was intended to cover a temporary shortfall in funding, although no documentation existed to clarify this point or indeed identify the repayment terms. However, at the time of concluding the Inquiry two repayments of £10,000 have been made as remittance of this debt.
25. The Inquiry found that the trustees had not satisfactorily accounted for the restricted funds held by the Charity. Some of the funds which were donated for the purpose of purchasing a new centre of worship had been used for other purposes such as rent payments, loans and donations to their partner organisation in Sudan.
26. During the Inquiry restrictions were placed on the Charity's bank accounts which meant the trustees needed to obtain the Commission's prior authorisation before accessing funds in their bank accounts. When submitting payment authorisation requests it became apparent that the trustees were not complying with the requirement set out in the Charity's governing document, as well as the mandates for their bank accounts, that each cheque carry two authorised signatures. On a number of occasions the trustees sought the Commission's authorisation to make payments from their accounts, however, despite repeated warnings, they persisted in submitting cheques with only one signature.
27. The Charity's books and records submitted to the Commission for inspection included a cheque book which contained a number of signed blank cheques. The trustees were informed that this constituted a serious risk to the Charity's funds. The trustees were given regulatory advice that this practice would be regarded as neglect of the duty of care required by trustees and that they should immediately cancel all pre-signed cheques.

⁵ See footnote 4 regarding restricted funds.

Issue 3: The governance of the Charity

28. The Executive Committee is the Charity's Trustee body. The Executive Committee comprises of a: Local Representative, a General Secretary, a Cultural Secretary, a Financial Secretary, a Social Secretary, a Educational Secretary an Administrative Secretary and a Hadra. The Executive Committee may also appoint up to four co-opted members. This body is responsible for the running and administration of the Charity.
29. The Charity acts as a focal point for the local Sufi community, providing a centre of worship for its members. It also provides a base for a number of other recreational and social activities conducted by the charity, including education classes to members' children. These activities are influenced by the wider Sufi community, especially the Sudanese network.
30. In relation to these activities, the Inquiry found that the trustees had no written policy documents in place to manage or monitor their activities. The trustees were unable to evidence or demonstrate to the Inquiry that there were any procedures and policies in place to govern their day to day activities, financial regulation or indeed, any terms of reference for the individuals holding designated posts within the trustee body determining their responsibilities and powers.
31. During further investigation it was evident that the trustees had not considered their position in relation to even the most basic issues, and despite a number of them having received personal benefits from the Charity in the form of loans (see paragraph 23 for further information), no conflict of interest policy existed. Additionally, even though the Charity held educational classes for children at its premises, there was no child protection policy in place, nor had the trustees received any formal training or guidance relating to their responsibilities for ensuring the safety of children whilst on the charity's premises.

Conduct of inquiry

32. The Inquiry examined the governance, finances and management of the Charity. This included meeting with the trustees formally on three occasions and carrying out a visit to the Charity's premises in order to obtain books and records.
33. The Inquiry also conducted a detailed analysis of the Charity's financial accounts, books and records.
34. 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 better able to manage the Charity's property effectively.
35. The trustees openly co-operated with requests for information by the Inquiry, nonetheless, it was frequently inadequate and necessitated repeated requests to be made for the same information. On a number of occasions the trustees assured the Inquiry that they were unable to provide additional evidence to support some of the aspects of the Inquiry; however, such information was often produced, in part, at a later date.
36. Explanations provided by the trustees in relation to their failure to provide documentation when requested identified that there was no consolidated records, and that due to the charity having relocated on a number of occasions, the charity's records were held by a number of trustees.

Resources Applied

37. 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

38. The Inquiry concluded that:

- the trustees did not have adequate procedures in place for the proper administration of the charity;
- the financial records of the Charity were inadequate and did not provide a clear audit trail for the collection and use of the Charity's funds;
- the Charity held classes for children and young people at its premises yet did not have essential risk management measures such as a child protection policy in place;
- some members of the trustee body had received unsecured, interest free loans from the Charity. These loans were not authorised by the Charity's governing document nor the Charity Commission;
- the trustees had spent restricted funds, donated for the purpose of purchasing new premises for the Charity, on payment of rent and utility bills and on a donation to the Charity's parent organisation in Sudan. This constitutes a breach of trust; and
- the trustees had not provided the Commission with an accurate picture of the Charity's financial position. The declared income and expenditure of the Charity did not match the transactions detailed in the Charity's bank accounts.

39. As a result the Commission found that the trustees were not properly managing and administering the Charity and were failing to properly discharge their duties and responsibilities as trustees.

Regulatory Action Taken

40. On 27 August 2008, as a temporary and protective measure, the Commission ordered, under section 18 of the Act, the Charity's banks to restrict transactions on the Charity's accounts.
41. On 8 September 2008, using power under section 9 of the Act, the Commission issued orders to obtain financial information from the Charity's banks.
42. On 16 October 2008 the Commission, under section 8(3) of the Act, directed two of the trustees to provide documentation relating to the administration and financial position of the Charity.
43. The Commission used its powers under section 19A of the Act to make a direction that the trustees now implement a number of actions, within certain timescales, and report to the Commission on progress as specified (see paragraphs *Actions required of the Trustees*).

44. On 27 May 2009 the Commission discharged its Orders, made under section 18 of the Act, which had placed restrictions on the Charity's bank accounts.

Impact of the Commission's Intervention

45. As a direct result of the Commission's intervention, the trustees must demonstrate that they have undertaken a governance review aimed at improving governance and decision-making within the Charity and safeguarding the Charity's assets.
46. The trustees have now engaged the services of a third party, a specialist charity accountant, to deal with their accounts to ensure that they are properly prepared and submitted to the Commission.
47. The governance review should ensure that the Charity is better placed to comply with its obligations as required by the Commission and under charity law, whilst delivering an effective service to its beneficiaries.

Actions required of the trustees

48. The trustees must implement a number of actions, as set out under a direction under section 19A of the Act within the timescales prescribed.
49. On 27 May 2009 the trustees were directed to carry out a governance review. In particular they must:
- put structures in place to ensure that any expenditure of the Charity's property is in furtherance of its charitable purposes;
 - adopt a policy for the use of cash transactions that is fully compliant with the Commission's guidelines for internal financial controls;
 - establish a procedure to identify all restricted and unrestricted funds held by the Charity and establish procedures for their proper application;
 - review all loans made by the Charity and establish a system of repayment;
 - identify and adopt a policy for donation of charity funds overseas in line with the Commission's guidelines;
 - ensure that a complete set of SORP compliant accounts are compiled and submitted to the Commission;
 - develop and adopt a child protection policy that is fully compliant with the guidelines of the Commission and to implement the child protection policy and procedures including consideration of training programmes for staff, volunteers and the trustees; and
 - develop and implement a conflict of interest policy in line with the Commission's guidance, to ensure that the trustees are able to carry out their duties in a properly accountable manner.

50. The trustees are required under the direction to provide interim reports to the Commission at three months and six months on;
 - (a) the progress of the review; and
 - (b) the decisions the trustees propose to take in implementing any necessary and/or appropriate steps arising from the review.
51. The governance review must be completed within nine months. The Commission will monitor this work and will evaluate the trustees' review once completed.

Issues for the wider sector

52. Trustees must comply with their statutory obligations to maintain accounts of their charities and file them with the Commission. Published annual accounts are the primary means through which trustees report on their stewardship of their charities and show public accountability. All charities need to ensure that the information submitted to the Charity Commission in their Annual Return and Accounts is accurate and reflects the true financial position of the charity. This must include the charity's income and expenditure from all sources and take into account restricted and unrestricted funds, as well as details of all assets held in the name of charity. Providing false or misleading information to the Commission in the accounts and annual return is a criminal offence under section 11 of the Charities Act 1993.
53. Trustees should ensure that financial controls are not only adequate but should ensure they are provided with sufficient information to satisfy themselves that the controls are being observed. Making payments in cash represents an extra degree of risk over using cheques or bank cards, as there is less post-transaction transparency over how the cash has been spent. Trustees should make every effort to keep the use of cash payments to an absolute minimum, if they choose to deal in cash trustees must ensure details of each payment are entered in a petty cash book or other accounting records. It is also important that cash is paid out of a petty cash float specifically kept for such payments and not from incoming cash.
54. Trustees have legal duties and responsibilities to their charity. Holding the position of trustee in name but failing to fulfill the legal duties and responsibilities of a trustee may amount to misconduct and mismanagement in the administration of a charity. They are responsible for the proper conduct and administration of their charity's affairs and have a duty to ensure that adequate financial controls are in place to mitigate any risks to the charity.

| Para | Issue | Charity Commission guidance and relevant legal obligation |
|-------------------------------|--|--|
| 4 5 6 10 16 19 | Annual Returns not reflecting full income of the Charity | CC15 Section 11 41, 42, 45 Charities Act 1993 |
| 22 23 | Charitable funds not properly accounted for. | CC61 Charity Accounts: The Framework CC63 Independent Examination of Charities Section 41, 42, 45 Charities Act 1993 |
| 7 14 15 | Requirements for charity's to submit accounts. | CC15 CC15A CC15B |
| 20 | Trustee Responsibilities | CC3 |
| 22 | Trustee benefits | CC11 |
| 25 26 28 | Internal financial controls | CC8 |
| 32 | Child protection policy, | www.charitycommission.gov.uk/supportingcharities/protection.asp |

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