

The Charity Commission Admits they got it Wrong

A Complaint to the Ombudsman resulted in the Charity Commission agreeing to do an internal review. This was supposed to be completed by the end of August but was only completed mid November. It is highly critical of how they had handled the case. It states:

"Having reviewed the case, I can see that the Commission appears not to have taken full account of this complicated structure and provided instead a very firm view that the Hall had transferred to CFWI".

i.e. While the Charity Commission had made a definite statement that CFWI were now the trustees of the Hall there was in fact room for doubt as to whether they or the ladies of the former KBWI still were.

"We also appear to have omitted to indicate to CFWI that in holding the property they did so on its existing trusts, i.e. the trusts declared in the 1937 Conveyance, and not in accordance with their own objects. I am therefore taking steps to confirm the basis upon which the Hall is held by CFWI and to advise about the legal restrictions that apply when land is held for a designated purpose".

The 1937 trusts mentioned states that it was sold "...as a site for an Institute for the Women of Kellybray". We have consistently pointed out that this means a meeting place for the Women of Kelly Bray. The Men's Institute in Kelly Bray pre-dates it and while "a Men's Institute" simply means a meeting place for Men "a Women's Institute" had a specific meaning so the wording was **carefully chosen to avoid that phrase**. The ladies of KBWI who bought the land did so to enhance their community, not to provide an investment for the WI movement. It now appears we have been right all along. Essentially CFWI may (or may not) be trustees they were holding it in trust as a meeting place for the women of Kelly Bray and not as an addition to CFWI property. They had no right to sell it because contrary to previous Charity Commission advice It was not a part of their Charity's assets.

What happens next is anyone's guess.

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Full Text of Charity Commission Review

Kelly Bray Women's Institute (KBWI)

I am writing further to your complaint to the Parliamentary and Health Service Ombudsman (PHSO). The Commission agreed with PHSO to do two things:

1. that we review how we handled your applications for authority for the Women's Institute building ("the Hall") in Kelly Bray to be transferred to a new village hall / community association; and

2. consider your complaint to the PHSO about the Commission's role in the transfer of property from the Kelly Bray Women's Institute to the Cornwall Federation of Women's Institutes (CFWI); that we wrongly interpreted the Women's Institute Constitution to reach the view that the property is held by CFWI.

I am writing to let you know the outcome of these reviews.

Before I begin, I would like to explain that I am a case officer in the Commission's Operations Division, Permissions and Compliance Team. While your applications for authority were handled by my colleagues in this team, I have not had any prior involvement with this case.

1. How the Commission handled your applications for authority

I consider that the Commission should have provided a better standard of service to you when conducting the case. For example, we could have set out in one comprehensive letter to you and the trustees, the options available and what information we would need to be able to make a decision about whether we could give authority to sell (or lease) the property. Instead, we seemed to ask for information in a piecemeal fashion, for example, we mentioned obtaining the National body's consent in our phone call of 10 February 2012 and we advised that the trustees must make an unconflicted decision about the proposal, with legal advice, in the phone call of 1 March 2012.

Accordingly, we do not appear to have provided one response to you taking into account all the information you submitted to us at various times. For example, our response to your application dated 31 January 2013 referred to the possibility of our making an 'albermarle' scheme. As you know, this is a scheme that provides authority for a separate village hall or community centre charity to lease the property (usually church halls) for a nominal rent, with the charity which owns the property retaining the right to use it, for its purposes, at set times. However, you had informed

us in 2011 that the trustees wanted to sell the property for nil consideration rather than enter into a lease, and that a sale is what CFWI and the National body had agreed in principle, CFWI with certain conditions applying to any sale.

A further consequence of our case handling and communication meant that we did not – or were unable to – make a decision about whether or not we could authorise the sale of the hall for nil consideration to a new charitable village hall association on the terms agreed with CFWI in the period before KBWI was suspended. Neither did we inform you that only a lease, under the authority of an ‘albermarle’ scheme, would be legally possible.

In conducting the review, I have not formally assessed, against the legal requirements, whether we could have drafted a scheme to authorise the sale. On the face of it, I can see that you provided important information about the circumstances of the Kelly Bray Women’s Institute and the circumstances, more broadly, in the village. This was information relating to both the members of KBWI and women in the village that was relevant to our decision-making. The Charities Act enables the Commission to take into account “social and economic circumstances” as well as the purposes of the original gift / donation / acquisition of property so that the gift can continue to be useful. It is not clear (because there was no note made) as to why these factors were not taken into account – or, indeed, to indicate that they were but that further information was needed, and what that information was. It was not clear from the case how the WI Constitution and the 1937 Conveyance affected our decision-making (insofar as we did not inform you whether or not we could make a scheme to authorise a sale or a lease (subject to receiving further information)).

2. Your complaint to the PHSO

With regards to the legal framework and the statutory basis on which we relied to reach the view that the Hall belonged to CFWI. It is your view that we wrongly interpreted the WI Constitution. We agree that this matter was far from straightforward with a Constitution governing the charity and a Conveyance setting out trusts governing the Hall. In addition, the suspension of KBWI complicated matters further. Unfortunately, the case does not record the reasons for our taking the position that we did.

Having reviewed the case, I can see that the Commission appears not to have taken full account of this complicated structure and provided instead a very firm view that the Hall had transferred to CFWI. We also appear to have omitted to indicate to CFWI that in holding the property they did so on its existing trusts, ie the trusts declared in the 1937 Conveyance, and not in accordance with their own objects. I am therefore taking steps to confirm the basis upon which the Hall is held by CFWI and to advise about the legal restrictions that apply when land is held for a designated purpose.

Conclusion

We acknowledge that this case was not handled in accordance with the standards of service we apply to our work and in key aspects, so that we failed to properly consider whether we were able to authorise, by scheme, the transfer of the Hall to a new community centre entity on the terms communicated, either before suspension or when a joint application was made after suspension. The Commission will endeavour to learn lessons from this case so that we can improve our practice in future cases of this type. As mentioned, we are also writing to CFWI to ascertain the current position with regard to the Hall and to provide advice and guidance, as appropriate.