



**CHARITY COMMISSION**  
FOR ENGLAND AND WALES

Mr Con Alexander  
By email only

Charity Commission  
PO Box 211  
Bootle  
L20 7YX

**Your ref: CXA/CKRS/2RC14.0003**  
**Our ref: JL/304328/446616/Ops**

**Date: 9 March 2017**

Dear Mr Alexander

**Recreation Ground Charity (Mapledurham) - 304328**

Thank you for your letter dated 20 January 2017. You have helpfully provided information relating to the Council's approach to managing its conflicts of interest in the matter of a prospective transfer of part of the Mapledurham Recreation Ground land (land which is held on designated charitable trusts) to the Education Funding Agency (EFA).

Whilst no decision to dispose of land has as yet been made, our interest here is focussed on whether the Council is capable of managing its conflicts of interest in this matter - and whether it appears to be taking adequate steps to do so. This matter was the subject of a recent application by opponents of the proposal to take charity proceedings against the Council (as trustee of Recreation Ground Charity – 304328 (the Charity)).

We will not at this stage draw any conclusions as to whether the trustees can rely on any existing power of sale to dispose of the land or whether such a transaction would require authorisation by the Commission. In the event that a decision to sell land is taken, you have committed to communicate the final agreed terms to us with a view to giving us opportunity to comment on this.

We have now given detailed consideration to the information provided by the trustee and by opponents to the proposals. We apologise for the time that it has taken to deliver our conclusions.

**Conflicts of Interest**

The duty to avoid or manage a conflict of interest applies to a corporate trustee because it (acting by its councillors) is in a fiduciary position with regard to the Charity and is consequently under a duty to act exclusively in the interests of the charity.

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In addition to the trustee's fiduciary duties the self-dealing rules apply if the sale is from the Charity to itself as local authority. This is not what is proposed here as the lease is to be granted (if approved) to the Education Funding Agency (EFA) which is an executive agency of the Department for Education and is not connected, as far as we are aware, with Reading Borough Council in its capacity as Local Authority, as Local Education Authority or as Planning Authority. In addition, under s.118 of the Charities Act 2011, there is no connection of EFA with the Local Authority as charity trustee.

The duty to avoid or manage a conflict of interest also applies when a conflict of interest may be one where no actual benefit to the councillors can arise. Such a conflict may still damage the reputation of the charity.

The duty to avoid or manage a conflict of interests ensures that a trustee does not allow their other public interests (in this case their other statutory duties as local authority, education authority and planning authority) to influence or be seen to influence a decision of the Charity.

The issue of conflicts of interest for local authorities acting as sole trustee for a charity is well recognised and [guidance is provided on the Commission's website](#).

Where conflict is not, or cannot be, properly managed and action is taken to set aside decisions made there is often financial loss, legal challenge and serious reputational damage. It is therefore important that the Trustee takes all reasonable measures to mitigate against such risks.

### **Measures taken by the Council**

You have set out the steps that the Trustee has taken to manage its conflicts of interest. His includes the setting-up of a subcommittee with delegated power.

We do take the view that the steps taken by the Council in establishing a subcommittee and delegating the decision making in relation to the EFA proposal to the subcommittee is capable of managing the conflicts of interest that exist.

The appointment of Councillor Deborah Edwards as new Chair of the subcommittee in May 2016 was problematic in the Commission's view as it impacted upon the Trustee's management of the conflicts that arise in this transfer process. She was a member of the Council's Adult Social Care, Children's Services and Education Committee (ACE) and Chair of subcommittee delegated to consider the EFA proposal. Rather than stepping down from the subcommittee she has stepped down from the ACE committee as from 27 January 2017.

You have asserted that as a committee member of ACE Councillor Edwards has not participated in any decision of ACE which relates in any way to the Charity, the Ground or the free school (I am assuming that this can be backed up with evidence from the Council's disclosed minutes online). If this case finds itself in Court (which we think is likely) these matters will be subject to scrutiny and it is a matter for the trustee to ascertain whether removal from ACE is the correct approach or whether it is appropriate, because of the reputational issues that arise in any event, for Councillor Edwards to step down from the subcommittee instead.

We have given advice and guidance about this issue in December 2016 and whilst we are not of the view that Councillor Edwards' chair position is so prejudicial as to prevent the conflict being managed it is nevertheless a matter for further consideration by the Trustee. The Trustee should address its mind to whether Councillor Edwards' position on the subcommittee is a matter which impacts upon the transparency issue and the need to be able to demonstrate that the decision making process in relation to the EFA proposal is proper, and in the best interest of the Charity.

### **Decision making and transparency**

The principles that charity trustees should follow to make sound decisions and fulfil their legal responsibilities have been developed and reviewed by the courts, and these are set out in our guidance [Its your decision: charity trustees and decision making](#) (CC27). We are informed that the subcommittee has been properly advised of their duties

The Commission notes that all of the papers for the subcommittee have been made available to the public via the Council's website and that supporters and opponents are invited to speak at public meetings.

You have confirmed that the Council is very aware of the importance of ensuring public trust and confidence in the Charity (as well as in charities more generally) and believes that this level of transparency is the best way of helping to demonstrate that the decision-making process in relation to the EFA proposal has been correct, appropriate and in the best interests of the Charity.

It is appropriate for all of the decision making in advance of any final decision (if it is made to proceed with the EFA proposal) to be made transparently and with supporting local authority officers who are not linked with any other committees that are related in any way to the Charity or the Ground.

You have confirmed that the Trustee will conduct a public consultation on the proposals. It is essential that a genuine and meaningful engagement in the consultation process is made.

We note that the Trustee does not accept parts of Mr Watts witness statement as presenting an accurate picture. It may be that the Charity will need to use media to explain its position very clearly indeed (and in its consultation paperwork). It is a matter for the Trustee to conduct an effective communication strategy.

### **Conclusions**

The transfer proposal relates to an offer by EFA to have transferred to it a parcel of land currently held in trust (1.231 acres of the 27 acre site, which represents 4% or thereabouts of the whole) under a lease for a term of 125 years in order to build a free school. The EFA land, if transferred, will not be available to further the objects of the Charity. Under the proposal, however, the Charity

stands to obtain a significant amount of money (in the order of £1,360,000) which could be used to enable it to further its objects, in return for the loss of a relatively small area of its land. We are therefore satisfied that the decision to explore the proposal is a decision that a reasonable body of trustees might make.

The Commission is aware that Mr Watt and those who support his position oppose the proposed transfer, and they seek to rely upon the inability of the Trustee to make a valid decision because the inherent conflict is so persuasive that it is impossible for the Trustee to make an un-conflicted decision.

Having considered the available information, we do not agree that the conflicts of interest are so persuasive that they cannot be managed. You have provided evidence to indicate that the Trustee has taken appropriate steps to manage the conflict (subject to the point I make above in relation to Councillor Edwards).

The Commission is of the view that the subcommittee can make a delegated decision that will be a valid decision if they ensure they act in accordance with their legal duties to take into account all relevant matters, including appropriate professional advice (including legal and chartered surveyor advice), and to also bear in mind the responses to public consultation and any issues or steps that arise as a consequence. In addition all irrelevant matters must be ignored.

The Commission has denied a request for S115 (2) consent recently indicating that we would consider using our own powers under S115 (3). In this case we have reviewed the capability of the Trustee to act and provided advice and guidance to the Charity regarding the management of conflicts of interest.

Yours sincerely

John Lewis  
Charity Commission – Permissions & Compliance Team