

Mr M White

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**Your Ref:**

**Our Ref:** BNWJ/ 232402/C-370956

**Date:** 01 November 2013

Dear Mr White,

**Re: Camphill Village Trust - 232402**

Thank you for all your recent emails and letters.

A number of families of villagers at Botton Village have raised concerns about how the charity is operating. As you are aware, I copied the letter to the charity for their response as the trustees were the persons best placed to answer the concerns. I have now had their reply and am in a position to respond substantively to you.

I think firstly that it would be helpful to explain that I have not replied to every issue you have raised in those emails and letters. I have only responded to those that are within our remit. The Commission cannot determine matters of ethos or doctrine.

As you will see below, I have put in both the charity's response to the concerns and the Commission's.

The families' concerns were:

**1 Departure from the Memorandum of Association**

The letter of 18 September 2013 expressed concern that CVT has departed significantly from the Memorandum by deliberate and admitted actions ultra vires and is intending to depart further, by implementing a recent review that takes no account of the Charity's Objects.

**Charity**

The charity's response to that is that they "do not believe the charity has departed from its charitable purpose". They have advised that they note the oversight in Chris Cook's undated letter

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(see attached) where the word “not” was accidentally omitted in the phrase “need [not] to act ultra vires” in the last line of the letter.

You also queried whether CVT trustees and senior management are positioning themselves for a change in the Memorandum to remove references to Steiner and volunteer co-workers as the central intention of the charity. The charity have advised here that the Commission will be aware from meetings and correspondence with the charity to date, that the trustees and senior management team have no intention to change the Memorandum.

The charity also advise that in “an increasingly challenging commissioning and financial climate and repeated problems with evidencing consistent good practice across our communities, our main focus at the moment has to be making sure we are providing consistently safe and high quality care, support and accommodation for our beneficiaries that complies with our regulatory requirements and contractual commitments and that we can do so in a way that is financially sustainable into the future”.

#### Commission

Indeed, I can confirm that the Commission has received no such request to amend the Memorandum of Association.

## **2 Governance Failings**

Your concern is that two independent reviews, commissioned by CVT in the past four years, have identified significant failings in governance by CVT’s Trustees.

#### Charity

The charity has advised here that the main historic failures in governance have been the failure to exercise adequate oversight over the communities and a failure to act in a more timely and robust way in response to concerns about communities. Conflicts of interests within the governance arrangements have made this particularly challenging, and as we (i.e. CVT trustees and the Commission) have discussed significant improvements have now been made by trustees.

#### Commission

As you are aware, the Commission had a number of serious regulatory concerns about the charity which were set out in my letter of 2 November 2013 (see attached).

We intervened here to ensure that the purposes of the organisation was exclusively charitable, i.e. to provide care and advance the education of people with a disability

The object of the charity is the care of people with disabilities. The communities themselves are not a purpose and any benefit which might arise to co-workers must be properly incidental (that is used to achieve the charitable object of looking after beneficiaries).

Following on from that, the decision relating to co-worker benefits were not taken by those who were conflicted (i.e. not co-workers but by independent persons).

In order to manage the potential difficulties (i.e. conflicts of interest) a framework needed to be established whereby independent trustees were in the majority and therefore able to take relevant decisions on an unconflicted basis. We could not see how that could be achieved without the governing document stipulating that the independent trustees must be in the majority.

The charity reported that the appropriate amendments to the charity's Articles of Association were completed in December 2012.

### **Membership**

You also raised concerns about membership of the charity in your letter. The charity's response to that is as follows:

#### Charity

"Following the appointment of the first paid manager for a CVT community, there was a surge in membership applications from co-workers and beneficiaries from Botton and the two Scottish CVT communities. Prior to this the membership of CVT had been largely inactive. These applications were accepted but with the proviso from trustees that further applications would not be considered by trustees until a membership policy had been developed. This decision arose from the concerns from some of the independent trustees at the inherent conflict of interest involved with having co-workers as members.

A membership policy was not developed until late 2012, largely because there were other pressing strategic priorities, resulting from other CVT communities entering into crisis and partly it was difficult to address the matter appropriately until there was a better approach to conflict management on the board.

When it became necessary following the Charity Commission's intervention to change the Articles to ensure that there was a majority of independent trustees, the trustees found they were unable to achieve the necessary support of the membership. As a result, and acting upon legal advice, a membership policy was drafted by lawyers and adopted by the trustees. That policy is attached and forms part of the membership application form.

New members were admitted in December 2012. Further information was requested from incomplete or unclear (in the context of the policy) applications.

Late applications, new applications and resubmitted applications were considered on 10<sup>th</sup> July 2013. Further information was requested in writing from applicants where applications were incomplete or unclear in the context of the policy. Consideration of a few applications from co-

workers and employees with less than one year of service with the charity was deferred to allow time for the membership policy to be considered again in that context.

Aside from these applications, at the time of writing there is just one resubmitted application (one of the letter's signatories) and no new applications awaiting consideration. No membership applications have been refused to date. The intention is that the board will look at membership applications twice a year so this will next take place later in the year".

#### Commission

It is important to note here that trustees have a wide discretion in respect of membership. Nevertheless they need to exercise that discretion in accordance with their fiduciary duties. We have advised the charity that concerns have been raised about membership policy. We have reminded them that any decision about the membership needs to be taken in the best interests of the charity rather than protecting the position of trustees.

#### **Personalisation, regulatory compliance and the vulnerability of co-workers and the Community**

I will deal with these three issues collectively.

#### Commission

As you know, concerns were raised in September 2012 that co-worker self-management had led to a series of safeguarding incidents concerning the charity's beneficiaries. Although those serious incidents were dealt with appropriately, the question remained whether the underlying procedures and safeguards were adequate to prevent those incidents arising at all?

We were advised that the number and pattern of serious incidents and the concerns of the commissioners and safe-guarding authorities indicated that underlying procedures had not been put in place or were being ignored. Consequently, there was a real concern that co-worker self management was not robust enough for the modern social care environment and that it had ultimately put beneficiaries and the charity's reputation at risk.

In our letter of 2 November 2012 we advised that the charity must ensure that all co-workers and staff are aware of the rules and regulations with regard to the safeguarding of vulnerable beneficiaries, and that they are adhered to.

In their letter of 20 September 2013 and during our meeting of 23 September 2013 the charity informed us that it is a requirement that all co-workers sign up to these safeguarding policies. I understand that all but one person has signed the safeguarding form confirming their acceptance of the safeguarding policy and understanding that they may be suspended and may need to leave their home and community as a result of any safeguarding allegations.

As you know, this is a charity for the care of people with disabilities. The communities themselves are not the beneficiaries. In providing that care, the co-workers in the communities have to operate within the care system.

Our regulatory concern here was driven by the key issue of the protection and safeguarding of vulnerable beneficiaries. This is paramount and there is a statutory and regulatory framework within which that must be provided. This is not a matter of discretion for the trustees or the members of the community.

We are pleased with the progress being made by the charity in this area. It is a challenging task for the trustees but one which they have been addressing. We cannot determine doctrinal issues but in any event they must be secondary to the overriding legal framework particularly the regulatory framework for the provision of care of vulnerable beneficiaries. As such the communities must operate within that regulatory framework.

#### PR failings

You have advised of your concern that the portrayal of CVT to the outside world has been revised with the re-writing of the website and other reference to co-worker recruitment.

This is a matter for the trustees. They have wide discretion in how they manage the administration (i.e. website and recruitment) of the charity

### **3 Financial Consequences**

#### Charity

As discussed in 1. above, the charity has serious concerns about carrying out the objects of the charity “in an increasingly challenging commissioning and financial climate”.

#### Commission

The overall responsibility for effective governance and the implementation of proper financial management rests with the trustees, but may well involve all staff members whether paid or volunteers.

#### Removal of the unpaid volunteer co-worker

#### Charity

“Given our detailed discussions about co-worker benefit and the need for the charity to be able to evidence that the benefit received is incidental and so expenditure on personal needs is reasonable taking into account both work contribution and indirect benefits received, we do not think it is necessary for us to comment further, except to note that our lack of further comment is not an acceptance of the comments made in relation to co-worker costs or hours at Botton”.

### Commission

The object of the charity is to care for people with disabilities. The communities are the means by which the charitable purpose is undertaken.

Within that Steiner ethos, the trustees traditionally have the power to engage/provide for co-workers. This is a matter for the trustees provided that they adhere to the objects of the charity. The provision of co-workers must be incidental to the carrying out of the charitable purpose rather than as part of the purpose itself.

It is important to note that the Commission only became involved with the issue of the co-workers because the benefit that they received was more than "incidental". Indeed, one of the serious regulatory issues we identified in 2012 was an excessive level of benefits for co-workers. The trustees were aware of examples of excessive co-worker expenditure in some communities in recent years.

We are aware that a review of co-worker costs is currently being carried out by the Finance Director of the charity. One of the findings is that each community, over a long period of time, has developed their own systems to record the community costs and other costs of carrying out the charitable activities and administration of the charity. This includes co-worker expenses whether they are incurred at individual, household or community level.

At present each community system has its own small differences but each attempts to reflect the needs of that community. It is clear though that they do record all the charity's transactions and there is an audit trail which identifies co-worker cost, albeit it does not seek to allocate every cost, particularly shared community costs, against each co-worker.

In addition, costs attributable to co-workers have not been shown as individual co-workers benefits in the charity's accounts but as an integral cost of the community.

The charity is still working towards the internal accounts showing individual co-worker or family benefits during financial year 2013/14 (with it being consistent for financial year 2014/15). However, the achievement of these items is linked to the introduction of a clear policy for co-worker remuneration which is also being developed.

### **Email of 22 October 2013**

You requested that your email of 22 October also be considered in the Commission's considerations of the charity's departure from the objects of the charity.

### Commission

You raise concerns regarding the charity's decision (following the recommendation of the strategic review) to appoint general managers for all the communities. You advise that this has not been communicated to the families and the change has caused trauma to the individuals and communities.

Please note that the internal administration of the charity is a matter for the trustees and not for the Commission. Trustees have a wide discretion in this area and you must take up your concerns with them.

The Commission had a particular concern in relation to the conflict of interest and how this was managed, if the co-workers allowance were determined by the co-workers themselves and by local management committees. However, the composition of the governing body now ensures a majority of independent trustees. This has gone some way to addressing our concerns. The trustee body also accept that any co- worker benefits must be incidental to the object rather than as part of the purpose itself.

As discussed in the meeting of 23 September 2013 between the Commission and the charity, the trustees have agreed that co-worker benefits will now be dealt with by means of a co-worker budget. It is for the trustees to determine the detailed rules or guidelines of this.

#### Job Description for new General Manager position at Delrow

You have raised concerns here that the job description “does not require them to have any prior knowledge or experience of Camphill, or more generally Intentional Communities, for such a vital role”.

Employee recruitment is a matter for the trustees as it falls within the general management for the charity. Issues of doctrine and ethos are not for the Commission and should be directed to the charity.

#### **Conclusion**

As far as the Commission is concerned, our regulatory concerns about the charity were driven by two key issues:-

1. the protection and safeguarding of vulnerable beneficiaries
2. to ensure that the purpose of the organisation was exclusively charitable.

We gave clear regulatory advice to the trustees about these issues and are satisfied by the progress that the charity is making in these areas.

Questions relating to doctrine and ethos are not for the Commission to decide. The administration of the charity rests with the trustees and the composition of the trustee body has been reconstituted to ensure that the majority of trustees are not co-workers. It is for the trustees to take decisions about co-workers and not for the co-workers themselves to determine.

This response has also been copied to the charity and the trustees.

I hope that this has explained why I will not be taking any further action.

Thank you for bringing this matter to our attention.

Yours sincerely,

*Bethan Wilkins-Jones*

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