



Case Report

Surf Action (1140191)

About the charity

Surf Action (formerly known as Combat Surfers) is a military charity based in Cornwall. The charity promotes and protects the physical and mental health and welfare of those who have been wounded while serving in the armed forces or civilian emergency services, and to help people deal with the ongoing problems of post-traumatic stress disorder by introducing them to surfing and other peer group activities.

Why the commission got involved

An employee of the charity - who has since moved on - raised concerns with us about how the charity was being run. It was alleged that the trustees were personally benefitting from the charity. As the charity's governing document does not allow trustees to benefit from the charity, we needed to get involved to establish whether there was any truth to the allegations.

The action we took

We assessed the charity, including by reviewing its financial documents and meeting 2 of the charity's directors to put our concerns to them. Later in our case, we met the charity at its premises and examined its records.

What we found

The organisation had originally been set up as a community interest company (CIC). A charitable company was then established to take over and run the activities. The charity's memorandum and articles of association prevented the directors from receiving remuneration from the charity.

We established that there had been a fundamental misunderstanding of charity law, as a result of which the former CIC's employees were appointed as directors of the charity. In law, this meant that they became charity trustees. The directors were not aware of this and appointed other individuals to serve as 'trustees'. However, in law, the latter had no standing.

The directors drew salaries for the roles they performed in the charity, and because they were trustees, this amounted to an unauthorised private benefit.

In the course of our engagement with the charity, we were concerned about the trustees' lack of understanding of running a charity and their poor knowledge of best practice.

The impact of our involvement

We explained that the directors must immediately cease benefiting privately from their roles in the charity. They agreed to stand down as directors. The individuals called trustees were initially appointed in their place; they subsequently resigned and new trustees were recruited to take the charity forward.

The new trustees appointed an operations manager and together they have sought to refocus the charity's activities and put it on a secure, professional footing. We gave the trustees permission to make changes to the charity's objects to better reflect its activities and beneficiary needs, which were made in June.

We have since monitored the charity to ensure that the previous issues have been worked through and the charity is now operating effectively.

Lessons for other charities

The trustees of a charity are the persons who have independent control over, and legal responsibility for, a charity's management and administration. This is the case even though they may be known within the charity by a different name - such as director, committee member or governor. The charity's governing document (which may be a constitution, trust deed, articles of association etc) will explain which body has ultimate authority and responsibility for directing and governing the charity. All properly appointed members of that body are charity trustees in law, whatever they are called, and will have legal responsibility for the charity.

It is important that anyone involved in running a charity understands their role and responsibilities and understands the provisions of their charity's governing document, including its provisions regarding private benefit for trustees. Charities whose governing document does not authorise trustees to be paid, must seek the commission's permission before doing so. It is a legitimate expense for trustees to seek professional advice when making important decisions.

For further guidance on what it means to be a trustee, see our core guidance [The essential trustee \(CC3\)](#).

For further guidance on trustee payments and expenses, see our guidance [Trustee expenses and payments \(CC11\)](#).

For further guidance on decision making by charity trustees, see our guidance [It's your decision](#).