



Regulatory Case Report

The Joseph Rowntree Charitable Trust

Registered Charity Number 210037



1. This is a regulatory case report (the 'report') of the Charity Commission (the 'commission')'s engagement with The Joseph Rowntree Charitable Trust (the 'charity').

About the charity

2. The charity was registered with the commission on 12 February 1963. It is governed by a trust deed dated 6 November 1939 and has general charitable purposes.
3. The charity's objects provide that 'the income [is] to be applied for such charitable purposes or objects and in such manner as the trustees shall in their uncontrolled discretion think fit'. The charity's current mission statement is: 'We are a Quaker trust which seeks to transform the world by supporting people who address the root causes of conflict and injustice'. The charity operates in accordance with Quaker values and the Quaker business method, as set out in the trust deed.
4. The charity seeks to do this primarily by awarding funding to applicants, including charities, other not-for-profit organisations and individuals. At a meeting with the commission in April 2014, it was stated that approximately two thirds of the bodies to which the charity provided grants were charities (the majority registered in England and Wales) and approximately one third were non-charitable bodies.
5. For the financial year ended 31 December 2014, the charity reported an income of £2.1 million and expenditure of £6.7 million.

Issues under consideration

6. The commission received a complaint in September 2013 that the charity was funding an organisation called Cage Prisoners, now known as Cage ('Cage'). The complainant referred to concerns that funds provided by the charity would be used by Cage to 'spread their message of support for jihadism, bigotry and hatred' although no additional information or evidence was provided by the complainant to substantiate these serious claims.
7. The commission opened a case into the charity in September 2013. The focus of the case, and the regulatory issues, were to establish whether the grants made by the charity to Cage were in furtherance of the charity's purposes and to ensure that the trustees had complied with their duties under charity law.
8. Cage is not a charity. It is a company. It has objects 'to promote human rights throughout the world' and 'other benevolent and philanthropic purposes which [its] directors from time to time think fit' which are not exclusively charitable. The remit and profile of Cage has changed over the years. It has described itself as a 'human rights organisation which exists to raise awareness of the plight of prisoners at Guantanamo Bay and other detainees' and on its website as 'an independent advocacy organisation working to empower communities impacted by the War on Terror. The organisation highlights and campaigns against state policies, striving for a world free from oppression and injustice ... and has been campaigning against the War on Terror for more than a decade'¹.
9. Funding other charities or non-charitable organisations can be an effective way to further a charity's purposes. But charities must only fund activities that further their charitable purposes and trustees must ensure they take steps to protect their charity's assets and reputation.

¹ For more information about Cage please see www.cageuk.org.

10. The commission therefore examined the following:
 - The nature of the charity's funding relationship with Cage.
 - Whether the charity's funding of Cage's activities was within and in furtherance of the purposes of the charity.
 - Whether the trustees had complied with their legal duties and responsibilities as trustees; in particular, when awarding funding to applicants (and especially applicants which are not charities) whether (i) the due diligence carried out by the trustees on the applicants and (ii) the monitoring of the end use of funds by the applicants, was sufficient.

Conduct of the case

11. The commission:
 - Wrote to the trustees in December 2013 inviting their response to the complaint.
 - Scrutinised the charity's relationship with Cage, and asked the charity to explain the decision-making processes followed by its trustees when agreeing to fund Cage.
 - Examined the charity's grant-making policies more generally. The commission looked at how the charity carried out due diligence on funding projects, how it monitored compliance with the terms of the funding it awarded, and how the trustees assured themselves that charitable funds awarded to non-charitable organisations had been properly spent in furtherance of the charity's charitable purposes.
 - Met the trustees at the charity's premises in April 2014.
 - Examined documentation relating to the charity's grant funding to Cage, including the grant applications made by Cage, the charity's grant offer letters to Cage, the closing reports received on completed grants as well as an interim report on the third grant, Cage's annual accounts, and an external financial review commissioned by the charity and carried out by a firm of specialist charity accountants in respect of the funds awarded to Cage (the 'review').
 - Reviewed the reporting requirements specified in the grant conditions.
12. The trustees engaged positively with the commission throughout the regulatory engagement, including by promptly providing all information requested, meeting all deadlines set, acknowledging the commission's concerns and proactively making improvements to the charity's grant-making practices.
13. The commission wrote to the trustees with its findings in November 2014 and they responded in December 2014. The findings and conclusions of the commission at the end of its formal regulatory engagement with the charity are summarised below.

Findings on the issues

The charity's funding of Cage

14. The commission established that the charity had provided funding to Cage over a 7 year period, as follows:

Date	Amount of grant agreed
2007	£50,000
2008-11	£120,000
2011-14	£135,000
Total	£305,000

15. The charity confirmed that it made the 3 awards detailed in the table to Cage in 2007, 2008 and 2011. The total funding (£305,000) over the period amounted, on average, to approximately 15% of the income of Cage during the period (a maximum of 25% in one year). This amounted to 0.8% of the charity's total funding during the relevant period. However, £33,750 of the funding from the 2011-2014 grant was not disbursed. See paragraph 20.
16. The 2007 grant was a one year grant of £50,000 awarded for a 'programme of work promoting human rights and reconciliation between faith communities' in pursuit of 4 named objectives, namely (i) promoting human rights in the UK and abroad (ii) monitoring abuses of human rights (iii) obtaining redress for and relieving need among the victims of human rights abuses and (iv) promoting and advancing interfaith dialogue. Cage's then director Moazzam Begg ('Mr Begg') was to be employed 'to undertake a programme of bridge building work in the national and international debate about terrorism and human rights' and reconciliation work. This grant was subject to a grant agreement requiring the monies to be used for charitable purposes.
17. The charity also agreed that the 2007 grant could be used to pay for additional legal advice for Cage to 'develop an appropriate constitutional framework (up to £10,000)'.
18. The 2008-2011 grant award of £120,000 over 3 years was 'to support the organisational activities of Cage'. The trustees informed the commission that they understood this grant was for the costs of the core charitable activities of Cage. It provided £40,000 funding per year and included the costs of paying Cage's staff. This grant was also subject to a grant agreement requiring the monies to be used for charitable purposes.
19. The 2011-2014 grant totalled £135,000 and was awarded to support Cage's 'core educational and research related work' to advance the 4 purposes given in paragraph 16. This grant also included the costs of paying for staff. This grant was also subject to a grant agreement requiring the monies to be used for charitable purposes.
20. At the start of the commission's engagement with the charity, the commission established that the then current 3 year grant (2011-2014) was almost at an end - the most recent payment had been made in January 2014. Three more payments totalling £33,750 were due to be paid under the 2011-2014 grant. However, the charity suspended these final grant payments following terrorist charges brought against and financial restrictions imposed on Mr Begg². As at December 2014, a total of £271,250 had been paid to Cage since 2007 (£305,000 less £33,750).

² All charges and financial restrictions against Mr Begg were subsequently withdrawn.

21. The trustees proactively commissioned the review to examine the funds awarded to Cage under the then current 2011-2014 grant programme. The review was undertaken by a team of professional charity accountants. The trustees' view was that the review assisted the charity in understanding how funds had been spent. However, the review concluded that it was not possible to attribute costs to specific projects undertaken by Cage in view of the accounting and financial reporting systems used by Cage. The review identified that the costs attributable to Cage's casework activities during this period amounted to £112,522 and that this sum exceeded the value of the funding awarded to Cage by the charity during this period (£101,250 - being the 3 year grant programme amount of £135,000 less the £33,750 due but unpaid). The review stated 'We therefore consider it not unreasonable to conclude that the JRCT funding was properly applied to these activities'. The commission took the view that the review did provide some assurance as to how the grants were spent, but only to a limited extent.

Whether the funding of Cage's activities by the charity was within and consistent with the charity's own objects and in furtherance of its charitable purposes

22. The charity's view was that the funding to Cage was consistent with the charity's objects, namely the advancement of conflict resolution and reconciliation between faith communities, alongside the advancement of human rights and the sound administration and development of the law.
23. In addition, both the charity's trustees and their legal advisers were of the view that all of Cage's activities were capable of furthering the charity's charitable purposes. They said:
- Funding Cage was permissible because the grants were in furtherance of the charitable purpose of the advancement of human rights since the grant conditions were confined to the 4 objectives referred to on page 3.
 - The funds had been spent on activities such as dealing with the unlawful detention of prisoners, abuses of human rights, campaigning against extra judicial killing and inter-faith bridge-building between minority Muslim communities and other faith communities in Western countries.
24. Even if some of its funds were used for political activities - which was and is not accepted by the charity - the charity argued that (in line with the commission's CC9 and RR12 guidance) the charity may undertake or support political activity in pursuit of its charitable objects, provided that such activity is not sufficiently substantial or continuous for it to be inferred that the charity's purposes are to some extent political.
25. Under charity law, whilst the charitable purpose of promoting human rights can be supported in a number of ways, not all activities to support or promote human rights activities will be capable of furthering a charitable purpose. Some human rights organisations choose not to be charitable because of the limitations that charity law requirements would impose on them.
26. The commission noted that the objectives identified in the charity's grant offer letters to Cage included, as a standalone objective, 'promoting human rights in the UK and abroad'. An unlimited standalone objective of promoting human rights in the UK and abroad is wider than charity law allows. The commission concluded that this objective therefore gave a misleading signal to both Cage and the charity that anything that was capable of promoting human rights was capable of being funded from the grant provided by the charity.

27. Whilst the conditions of the grants offered did make it clear that grant recipient funds must only be used for charitable purposes, the commission's concern was that neither Cage nor the trustees properly understood the distinction between human rights activities which were charitable in charity law and those that were not. The commission believes the trustees were acting in good faith but that they had not sufficiently appreciated the importance of this distinction.
28. The commission noted that the review relied on what Cage had reported to the charity about activities which Cage had undertaken under the 2011-14 programme and which, in Cage's opinion, furthered charitable purposes. In the commission's view, it was not evident that the review had assessed whether the activities undertaken by Cage (campaigns, lobbying and individual casework) were confined to promoting human rights as understood under charity law, and which the charity would therefore have been able to support and fund.
29. The commission could not verify the conclusion reached by the review and the charity because the charity's audit trails monitoring the grant programmes concentrated not on whether the activities were exclusively charitable but instead on the impact of the work funded and on what Cage had learnt from carrying out those activities.
30. Having examined the grant and monitoring paperwork provided by the charity, as well as information on Cage's website about the nature of its work, the commission could not agree with the charity's assessment that all activities that were funded were charitable. The commission's view was that some, but not all, of Cage's activities might further a charitable purpose. Cage's work on counter terrorism issues, for example, did not appear to be limited to or entirely related to human rights issues. Moreover, in the absence of robust monitoring, there was nothing to constrain Cage, given that it is not a charity, from using the grant funds to carry out activities that did not further a charitable purpose.
31. As noted previously, the commission believes the trustees were acting in good faith and that it was the charity's intention exclusively to fund programmes capable of furthering charitable purposes. However, this can only be the case if all activities funded are capable of furthering charitable purposes. The commission was not convinced (i) that the trustees and Cage had understood what activities might or might not be capable of furthering charitable purposes and (ii) that, even if they had understood this, the trustees would have been able to satisfy themselves that the grant was spent exclusively on charitable purposes without more robust monitoring on their part.
32. The commission's view was that a proportionate regulatory response was to ensure that, in future, grants were awarded for, and through effective monitoring, demonstrated to have been used for, exclusively charitable purposes.

Whether the trustees had complied with their legal duties and responsibilities as trustees

Funding of 'core costs'/'core organisational costs'

33. Funding of a non-charity's general running costs (or 'core' costs), such as administration or staffing costs which are not directly connected to the activities that the charity is funding presents potential difficulty. First, this funding could be used to support activities and outcomes that are outside the charity's objects or that may not be charitable in law. Secondly, this funding could confer a private (ie non-charitable) benefit on the non-charity, its staff or board members.

34. In this case, from the paperwork examined, it was not clear to the commission what organisational running costs the charity had funded. Both the 2007 and 2008-2011 grants made reference to salaries. The papers for the 2008-2011 grant programme made reference to 'core funding' and to a £120,000 3 year award for 'core organisational costs'. The 2011-2014 grant programme awarded a 3 year total of £135,000, again referring to 'core costs', although it also reiterated the objectives for which this funding was to be used.
35. The charity said that the 2008 grant was 'inaccurately expressed in shorthand in the grant acceptance form as being for 'core organisational costs'. However, the trustees' intention and understanding in good faith was that this referred to the costs of the core charitable activities of [Cage]'. The charity said that Cage had told them it did not want funding for Mr Begg's salary for 2008-2011 as they could secure it from other sources.
36. As noted, the 2007 grant was provided to employ Mr Begg to undertake a specific programme of work. It was not clear to the commission that amounts paid to Mr Begg as a salary were expended only on matters which were for exclusively charitable purposes, in particular, the advancement of human rights. Even though the review covered the 2011-2014 period, it referred to the 2007 grant and stated this was 'to pay the salary costs of Mr Begg' without specifying that such salary costs would only be paid to the extent they were incurred on matters which were in pursuance of the charitable purpose of the advancement of human rights. According to Cage's accounts, Mr Begg was a director of Cage around the time of the 2007 grant and appeared to have a wider role in Cage than carrying out activities for the purpose of the advancement of human rights and interfaith work. There were also other references in the grants' paperwork to paying for other staffing costs in relation to casework; again, given that the casework may or may not have been confined to cases for the charitable purpose of advancing human rights, it was not clear that all of the funds were restricted for use for exclusively charitable purposes.
37. In addition, under the 2007 grant, the charity agreed to pay for additional legal advice for Cage 'to develop an appropriate constitutional framework (up to £10,000)'. The commission was of the view that it was not clear that the charity could have provided funds to assist with the incorporation of Cage, as a non-charitable company.
38. The commission decided that it was not proportionate to pursue these historical payments made to Cage for the following reasons: the length of time which had elapsed since the charity made the grants which included staffing and general costs; the provision of some evidence that some of Cage's activities might further charitable purposes; the fact that the charity had taken legal advice. However, the commission made clear to the trustees that they could not continue to fund the core central general operational and staffing costs of Cage.

Grant making and due diligence

39. The charity had in place a standard grant agreement in respect of Cage, which stated the 4 objectives for which the grants could be used, namely those referred to in paragraph 16, and that the money should be used for charitable purposes.

40. The commission was of the view that the charity has a sound core grant making process at the due diligence and award stages and its processes are appropriate to the volume of grants it makes. It was also of the view that the charity's application and assessment processes include elements of good practice including:
 - A staff filtering process which ensured applications matched the charity's current priorities; it was evident that this worked as a filter - some applications did not reach the next stage.
 - Face-to-face meetings between the charity (including at least one trustee) and the applicants were held for significant applications. This demonstrated a tailored, risk-based and proportionate approach.
 - All grant decisions were authorised by the trustees.
41. Where a charity funds controversial or unpopular causes or an organisation is engaged in high profile (and potentially controversial) activities, the trustees must consider the reputational and other risks to the charity and must conduct a commensurate level of due diligence and assurance.
42. The charity did carry out some due diligence and assessment of the reputational risks associated with funding Cage. Minutes of trustee meetings in 2010 and 2011 show that the trustees were aware of allegations by critics of Cage that it had close links to terrorists and that Cage had denied those allegations. The charity had also discussed the criticisms with Cage and received repeated assurance that Cage denounced terrorism and endorsed human rights standards. The trustees agreed at the time to offer moral support to Cage, not to enter into public debate, but to prepare a defensive statement if necessary. The trustees also told the commission that a number of respected organisations and individuals had supported or worked closely with Cage including human rights lawyers, human rights NGOs, US military lawyers and other civil society organisations.
43. The trustees told the commission that the charity often funds charitable causes which may be unpopular with some parts of the public, precisely because these causes can often be those in greatest need of support. The charity argued that this is in line with the intentions of its founder, Joseph Rowntree, and the charity's Quaker values.
44. The charity also argued that its strong reputation amongst philanthropic foundations and wider civil society is largely based on the charity's willingness to support innovative and unpopular causes.
45. The commission made clear that when funding high profile, unpopular or controversial causes or organisations the charity should regularly review its due diligence.

Monitoring and reporting

46. The charity's approach had been to conduct due diligence processes at the grant application stage and then to apply a relatively lighter touch to reporting and monitoring. The charity trustees informed the commission that its view was that over-bearing monitoring processes can be counter-productive and can prevent organisations from being effective in achieving their objectives.
47. The commission understands the points made by the trustees about proportionality, balancing the costs of monitoring and not having an overbearing process; however, the trustees are under a duty to ensure funds are properly and lawfully spent. The commission concluded that the charity needed to tighten up its monitoring of grants, particularly to non-charitable bodies and for activities such as the promotion of human rights where only some of such activities are charitable in law.
48. The charity informed the commission that its practice is to request a formal closing report at the end of the grant period, as well as obtaining annual accounts during the funding period. The commission recognised this as good practice. The charity's staff also visits grantees at least once a year.

49. In respect of the grants made to Cage, the charity received formal closing reports on the 2007 and 2008-2011 grants and annual accounts as these fell due. The charity informed the commission that:
- Staff met regularly with Cage throughout the funding period including 3 face-to-face meetings between September 2013 and April 2014.
 - Staff and trustees from the charity also attended some of Cage's events as part of the charity's monitoring process and to ensure that public statements were non-judgemental and conciliatory.
 - The charity requested some additional information by telephone and email from Cage about how the funds were spent.
50. The commission's view was that the reporting requirements specified in the grant conditions were not strong enough in this particular case. The commission was of the view that, to comply with the duty of prudence, the trustees should have requested written annual update reports in respect of the grants to Cage, especially as the charity was funding a non-charitable organisation, to complement the receipt of annual accounts, closing grant reports and face-to-face discussions. The commission was also of the view that the charity needed to strengthen its monitoring processes so that it could reduce the future risk of its charitable funds being spent in furtherance of non-charitable purposes and that the trustees should have exercised closer scrutiny of expenditure and activities undertaken by the grant recipient in areas where the boundaries between what may be regarded as charitable, or not, may not be straightforward.

Regulatory advice given

51. The commission provided regulatory advice and guidance to the trustees on a number of matters including: the promotion of human rights as a charitable purpose, the importance of monitoring funding and activities, and the importance of conducting adequate due diligence of grant recipients.
52. The trustees were advised to take the following steps to improve their internal procedures:
- Strengthen the charity's grant application terms to cover the possibility - when giving to non-charitable entities - that funds may be spent in furtherance of non-charitable purposes. Terms should cover the issue of how the recipient should ensure charitable funds are applied only for charitable purposes, and not for the general/non-charitable purposes of the non-charity. They should also cover 'claw back' arrangements, where the charity can take steps to recover funds where evidence is not provided by the recipient that such funds have been spent exclusively on activities in furtherance of a charitable purpose.
 - Strengthen their monitoring processes to include adopting a dip-testing policy to monitor grants more effectively - particularly where funds have been provided to non-charitable entities - so they can have greater assurance that funds have been properly applied. This monitoring should be risk-based so that, where the risks are higher, more steps are taken to verify explanations and expenditure.
 - Consider drawing up a specific policy for funding recipients where the charitable purpose is linked to the advancement of human rights. This area can be more difficult than other types of funding and the commission's recommendation was that, if the charity plans regular funding of projects in this field, the charity would be best served by a statement of policy to provide clarity for the future.

53. In its letter of November 2014 setting out its findings, the commission urged the trustees to exercise extreme caution before releasing any further funds to Cage, notwithstanding their possible legal obligations under the then current grant programme. The commission made absolutely clear to the trustees that the charity could not, whether committed or not, fund the core central general operational and staffing costs of Cage in future. If they did, they would be in breach of trust.
54. The commission also advised that if the charity was legally committed under the terms of the existing grant, it would have to insist on a recalibration and ring-fencing of the grant. If the grant was ring-fenced, the charity could only fund narrow, specific programmes of work where it was absolutely clear and without doubt that all of the activities in the specific programmes were exclusively charitable. The charity needed to be alert to the commission's views on where the boundaries of charitable human rights activities lie and recognise the difficulty in this area.
55. The commission further advised that even if the trustees could be satisfied the grant was confined to exclusively charitable activities, Cage itself is an organisation which had, and would continue to, attract controversy. The charity would need to consider afresh the risks of entering into a future continued partnership with it. The trustees would have to be convinced that they were discharging their wider due diligence responsibilities.
56. The commission confirmed that it would scrutinise the trustees' decision-making in relation to any future decision to fund Cage.

Steps taken by the charity

57. The trustees generally accepted the regulatory advice and guidance provided by the commission except as regards the commission's interpretation around the detail of charitable funding of human rights purposes.
58. In particular, they accepted that:
 - Their grant offer letters could have been improved to specify more clearly the manner in which the charity's funds should be used and that clearer requirements to ring-fence funding for exclusively charitable purposes would have been helpful.
 - The charity should have ensured that formal annual written update reports were received from Cage during the period of its funding to complement the face-to-face meetings and other contact it had with it.
59. During the period of the commission's engagement the trustees proactively took a number of steps to improve the charity's processes and procedures, including:
 - Carrying out an overall review of the charity's grant-making procedures, to ensure that they are sufficiently robust with respect to all applicable categories of grant recipients.
 - Approving an internal policy document on making grants to organisations that are not charities.
 - On the commission's recommendation, approving an internal guidance note on making grants for the advancement of human rights.
 - Taking a number of steps to strengthen its due diligence when making grants to non-charitable bodies.

- Reviewing the charity's standard grant agreements, including to make it clearer that, during any multi-year grant, an annual written narrative progress report is required.
- Introducing new procedures which systematically request monitoring reports and track compliance (in addition to the requirement for a copy of statutory annual accounts that separately identify the charity's grant).
- Strengthening the financial reporting required from grant recipients which are not charities - ensuring that where a grant is restricted to particular purposes or activities, a financial report is received for each year of the grant to show how grant funds have been spent.
- Making it clearer in grant conditions that funding will be suspended, terminated or clawed back if the trustees have reasonable grounds to believe that payments cannot, will not, or have not been used to further the stated charitable purposes.

Conclusions

60. The commission believes it was the charity's intention to fund programmes that were capable of furthering charitable purposes. The charity had a sound core grant making process at the due diligence and award stage which included elements of good practice such as a filtering process, face-to-face contact with prospective recipients, and a written heads of terms specifying the charitable purposes.
61. The charity's grants to Cage were intended for activities which were capable of furthering the charity's charitable purposes but, in the absence of sufficient information regarding those activities, it is difficult to form a more definitive conclusion.
62. It is difficult to see how in these circumstances the trustees could have been sufficiently assured that the monies given to Cage were used for charitable purposes, particularly as Cage is not a charity and not all of its activities furthered charitable purposes.
63. The charity's monitoring and reporting requirements were not robust enough in this particular case. A proportionate approach is perfectly acceptable, that is: differing levels of attention and care for different types of organisations, or sums of money, or for certain purposes, or in certain countries. But the higher the risks and the more features identified as being difficult, the more the trustees should do.
64. The trustees needed to conduct more robust and more regular due diligence in respect of grant recipients, in particular non-charitable grant recipients.
65. The commission concluded that the charity needed to make improvements to its processes and procedures, to ensure robust scrutiny and control of funds, particularly when giving grants to non-charitable bodies. The trustees also needed to ensure that they could demonstrate that they had discharged their legal duties and responsibilities, in terms of appropriate due diligence and monitoring, to ensure that grant funding was used only in furtherance of exclusively charitable purposes. The commission notes that the trustees of the charity have since addressed this.
66. During the regulatory case, the trustees engaged positively with the commission and the charity showed a clear willingness to improve aspects of its processes.

Subsequent events

67. The substantive stage of the commission's engagement with the charity ended in November 2014. The publication of this report was delayed, with the charity's agreement, pending:
 - The conclusion of a separate case, on similar issues, with The Roddick Foundation in order to ensure a fair and consistent approach, to allow the commission to conclude that case, and to allow the 2 reports to be published simultaneously.
 - The conclusion of court proceedings brought by Cage challenging the commission's engagement with the charity.
68. After the end of the commission's substantive engagement in November 2014 and before the publication of this report, various public statements were made by Cage, including at a press conference on 26 February 2015, about Mohammed Emwazi. Those statements attracted public criticism and concern about the charity's funding of Cage. On 27 February 2015, the charity issued a statement in response to comment about its funding of Cage³.
69. The commission re-engaged with the charity on 2 March 2015 to seek urgent assurances about:
 - The current position as regards the charity's relationship with Cage and its activities both financial and otherwise.
 - Whether the charity intended to make any further payments under the 2011-2014 programme.
 - If there were any future proposals, the basis of any new or contemplated links or funding programmes with Cage.
 - Whether the charity had already contacted Cage in light of the previous week's events to clarify whether any of its funds had been used by Cage to support Mohammed Emwazi and, if not, whether it would now do so.
70. The commission referred to its letter of November 2014 setting out its earlier findings and providing regulatory advice to the trustees, in particular urging the trustees to exercise extreme caution before making any payments to Cage. See paragraph 53.
71. The commission's view expressed to the charity was that, in light of the statements made by Cage and the public reaction to them, clear questions arose for a charity considering funding Cage's activities as to how the trustees could comply with their legal duties as charity trustees. The commission expressed the view that there would be significant reputational damage to any charity intending to fund Cage at that time and that it was difficult to see how trustees of a charity could justify taking such risks while complying with their legal duties of prudence and of protecting the charity's assets and reputation. The commission stated its view that a breach of such duties may well expose the trustees to personal liability.
72. The commission stated that, as a result, it would 'have serious regulatory concerns now of any charity that expressed an intention to fund the work of Cage'. Given this, the commission asked the charity's trustees to confirm specifically that the charity had no plans to provide further funding for Cage. The commission stated that, if satisfactory assurances were not received, it would need to consider what further regulatory action it needed to take to ensure that public trust and confidence were not eroded by this issue.

³ <http://www.jrct.org.uk/userfiles/documents/JRCT%20Media%20statement%2027%20Feb%202015.pdf>.

73. The charity replied, through its solicitors, on 3 March 2015. In a detailed letter, it confirmed that it last made a grant payment to Cage in January 2014 and that it did not intend to make any further payments under the 2011-2014 grant. The trustees confirmed no funding proposals to Cage were currently under consideration and the charity had no current plans to fund Cage. The trustees also confirmed that they would ask Cage whether any of the charity's funds had been spent on casework to support Mohammed Emwazi⁴.
74. The trustees acknowledged the commission's regulatory interest and additional concerns in the light of [then recent] public and media interest but stated that 'the trustees are unable to give the commission a commitment that trustees will never ever wish to fund Cage at any future date and they are reluctant to fetter their discretion irrevocably and for all time with no regard for changing circumstances'. The trustees' letter went on to propose a procedure through which the trustees would actively consult the commission in writing before making a future grant award or payment to Cage.
75. In response, the commission sent a further letter to the trustees on 4 March 2015. The commission welcomed the confirmations given, but stated that the charity's letter did not fully address the commission's regulatory concerns and noted that the response was carefully qualified. The commission expressed the view that this was not an acceptable response in the then current circumstances. The commission noted that the response stopped short of accepting that, in the circumstances which had arisen, and in light of the trustees' legal duties and responsibilities, the charity could not fund Cage, either now or in the foreseeable future. The commission expressed concern that the trustees did not fully appreciate the gravity of this issue and the importance to them, in the best interests of the charity, of making an unequivocal response. The commission stated that the trustees' considered and unequivocal response was critical not only to protect the best interests of the charity, which had a long and distinguished tradition, but also as a reflection on the integrity of the charitable sector generally, and the public's trust and confidence in it. The commission therefore gave the charity an opportunity to reflect further on the issue.
76. The charity's legal adviser contacted the commission on 4 March 2015 to discuss the commission's letter of that date and to seek clarification as to what exactly was required of the charity. The commission confirmed its position by email on the same day, stating:
- 'You also asked me for clarification about exactly what is now required of the trust. We are expecting a straightforward confirmation that the trust, in the circumstances, agree they will not fund Cage now or in the future.
- As we explained previously, the current response stops short of accepting that, in the circumstances which have now arisen, and, in light of the trustees' legal duties and responsibilities, they cannot fund Cage per se. This means either now or in the future; foreseeable in this context was not intended to indicate a caveat or exception.'
77. Following this correspondence, the charity sent a further letter to the commission on 5 March 2015, through their solicitors, providing an assurance in the following terms:
- 'Whilst this is an extremely difficult decision to make, in the interests of all its grantees and the other work of the trust, the trustees have therefore decided to give the commission an assurance that it will not fund Cage either now or in the future. This should not be taken as in any way modifying the trustees' previous representations as to the charitable nature of the trust's funding of Cage, but is an unequivocal assurance.'

⁴ The charity subsequently received a statement from Cage, which it passed to the commission, that confirmed that none of the charity's funds had been spent on casework to support Mohammed Emwazi.

78. In June 2015, Cage issued judicial review proceedings challenging the commission's engagement with the charity. At the charity's request, it was recognised by the court as an interested party in the proceedings, and it supported one of Cage's grounds of claim, namely that the commission had acted outside of its powers by deciding to require the charity to provide unequivocal assurances that it had ceased funding Cage and to rule out any future funding of Cage regardless of any future changing circumstances.
79. Cage's other 2 grounds of claim (alleged breach of human rights, and alleged procedural unfairness) were dismissed by the High Court at a hearing in July 2015.
80. In the course of the proceedings, it became clear that the charity and the commission had (and have) different understandings of the correspondence between them in March 2015, in particular whether:
- the correspondence between the commission and the charity amounted to a direction to or requirement on the charity (the charity's position) or whether it was open to the trustees to decline to provide the assurance sought (the commission's position).
 - the scope of the assurances sought (or directed/required) was to rule out future funding of Cage regardless of any future changing circumstances (the charity's position) or only in the current circumstances (the commission's position).
81. These factual points remain in dispute, and were not resolved by the judicial review proceedings.
82. With the encouragement of the court at a hearing on 21 October 2015, the parties (Cage, the commission and the charity) brought the judicial review proceedings to an end by agreeing a statement (as set out in the following paragraph) and by Cage withdrawing its claim. The court made no order as to costs, and did not give a ruling or make any determination.
83. The statement agreed by Cage, the commission and the charity, recorded in the court order, was as follows:
- 'Trustees must be free to exercise their fiduciary powers and duties in light of the circumstances that exist at the time, if acting properly within their objects and powers and in the best interests of the charity. The commission does not seek to fetter charities' exercise of discretion whether to fund the charitable activities of Cage for all time, irrespective of changed circumstances.
- The commission recognises that it has no power to require trustees to fetter the future exercise of their fiduciary powers under its general power to give advice and guidance. In consequence there is no obligation on the trustees of JRCT to fetter the proper and lawful exercise of their discretion in future.'
84. Following this statement, and without being prompted by the commission, the charity wrote to the commission to provide the following reassurance regarding the charity's position on the funding of Cage:
- 'However, in addition to the assurances given in our letters of 10 December 2014 and 3 March 2015, I can reassure the commission that JRCT trustees genuinely do not have any plans to fund Cage for the foreseeable future and would not lightly set aside the public commitment that they have made not to fund Cage again.'

Impact of the commission's engagement

85. The commission's intervention has strengthened the charity's internal processes and procedures so that there can be greater public assurance that the charity is less at risk of applying charitable funds in furtherance of non-charitable purposes in the future, and that its trustees will fully comply with their legal duties and responsibilities.
86. It is clear to other charities and the public that the commission, as regulator, will probe robustly how charities spend charitable funds in order to ensure accountability and transparency and to preserve public trust and confidence in charities.