

WHO WILL POLICE THE CHARITY POLICE?

When the Regulators prove toothless, it's time to bite back, says SIMON FAIRLIE.

Readers of the last two issues of *The Land* have by now probably heard quite enough about the tribulations of Monkton Wyld Court (MWC), the Dorset community where *The Land* magazine's HQ was based from 2010 until we were summarily evicted in 2023. However, an update: Since Issue 34 appeared, Simon has been acquitted at Weymouth magistrates' court of stealing the community car; a Daily Mail report in September ridiculed the prosecution; and probably as a result, two of the four trustees responsible for gutting the community have resigned. Now MWC is close to collapse — the place is half empty, the website is long out of date, the walled garden is weed-infested, and the farmyard, without cows, is derelict.

But what I wish to focus on here is the role of the Charity Commission (CC), both in the case of MWC and more generally. The Commission is the only authority to whom the MWC trustees are accountable; but it washed its hands of the entire affair, and from what we have heard that is not uncommon.

Misconduct and Mismanagement

One of the statutory functions of the Charity Commission in its Regulatory Risk Framework is:

identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with such misconduct or mismanagement.¹

In November 2023, five evicted residents of MWC, along with five former trustees submitted irrefutable, hard evidence of misconduct and mismanagement by the incoming trustees of the charity. This comprised a 43 page report backed up by 45 appendices containing documentary evidence of unlawful kangaroo courts, unsubstantiated and libellous allegations, ruthless evictions of long term residents, unwarranted threats of police action, demands for money, breach of contract, many other abuses of power, and radical changes to the Governing Document and the Objects of the charity.

The Commission wrote back:

"On this occasion, having assessed the concerns raised against our Risk Framework [the same Framework cited above] we must advise that they are not matters that we can become involved in."

A further three appeals to the CC and their Customer Relations Section yielded the same indifference, the final response stating:

"We have done our best to help you understand that charities are independent. The trustees are responsible for governing the charity and making decisions about how it should be run. The Commission cannot run charities, or act, or make decisions on the trustees' behalf."

This is simply not true. The Commission has extensive powers to run charities, including "directing a person not to take specified action that would be misconduct and/or

mismanagement", and "appointing an interim manager to manage the affairs of the charity alongside or instead of the trustees."² In the case of MWC, for reasons never properly explained, it chose not to investigate whether it was necessary to invoke any of these powers. Effectively this means that the trustees are accountable to no one, unless they commit a criminal offence flagrant enough to invoke police action.

Easy Pickings

The structure of charitable trusts is a curious one. Trustees are technically the owners and managers of the assets of the charity, including any real estate, but in theory are unable to profit from this ownership. There is thus little financial reward for being a trustee, other than through malpractice. The incentive for becoming a trustee ought to be that one wants to support the aims of the charity, and often it is; but there may be other more sinister motives, such as financial benefit, self-aggrandisement, or the desire to control or manipulate the charity in a certain direction.

In some cases (eg the National Trust) trustees are appointed by another body controlled by a membership; but in many cases new trustees are simply appointed by the existing trustees. Since being a *bona fide* trustee can be demanding yet unrewarding, turnover can be high; when trustees want to leave it can be hard to find replacements: the temptation is to appoint the first people who come along. This is what happened at MWC in January 2023, when two of the already depleted board of trustees wanted to resign, and five new trustees were appointed, all at one go.

In such cases a small group of outsiders become managers of an organisation and *de facto* owners of its property overnight, without paying a penny to acquire that privilege and its powers. That couldn't happen in any other sector of society. Moreover unless the trustees are answerable to a membership body, they are accountable for their actions only to the Charity Commission. In the absence of a strong regulatory body, the system is clearly open to abuse.

We Are Not Alone

It is perhaps unsurprising then that since we have been trying to resist the takeover of MWC by rogue trustees, we keep hearing stories of other cases that are similar, some dating back decades, others more recent: an art therapy centre taken out of the hands of its founders and then closed down; a High Street philanthropic building co-opted for corporate purposes; a farming community taken out of production and gentrified; community gardens sold to developers. Some disputes are well publicised, such as the long running dispute at Botton Camphill Community³ or the issues that many Totnes residents and the disappointed students of now closed

Schumacher College have with the current trustees of Dartington Hall.⁴

It is not the place here to assess the rights or wrongs in any of



Will a neglected Monkton Wyld now re-wild itself?

these disputes. That is the business of an investigative and regulatory body, rather than a magazine. What is apparent in many of these cases is the absence of any recourse to such a body, or more specifically the reluctance of the Charity Commission to intervene. The residents of Botton found that the Charity Commission:

has declined to investigate the Camphill Village Trust for breaches of its Objects as alleged in a legal opinion by a leading charity lawyer, stating that it could not judge on matters of doctrine and ethos whilst nevertheless stating that they were satisfied CVT had considered these adequately. The Commission advised that this matter was for the High Court to decide.⁵

More disturbingly, at the Christian community at Sutton Courtenay Abbey in Oxfordshire, the Commission, despite previous complaints, only intervened after one resident, who felt persecuted by trustees, committed suicide in June 2021. A request under the Freedom of Information Act for the release of correspondence between the Charity Commission and the trustees was refused by the Commission, citing the requirement under section 31 of the Act to “protect charities against misconduct or mismanagement (whether by trustees or other persons) in their administration.”

Pick and Choose

This not to say that the Charity Commission never carries out investigations. At the time of writing the CC has published reports on its website of 35 statutory inquiries carried out since November 2022 where “misconduct and/or mismanagement” was identified. In most cases this consisted of financial irregularities, such as not filing accounts, unauthorised payments to trustees, or entering into dodgy commercial deals. This was frequently combined with administrative failings, such as insufficient trustees on the board or failure to hold meetings.

Only five charities were investigated for other reasons: in two cases (Ampleforth College and a Jehovah’s Witness charity) the main issue was the safeguarding of children from abuse; in one case a trustee was reported for hate speech; and in another, three trustees were designated individuals under the *Russia (Sanctions) Regulations 2019*. In only one case, that of Mermaids, who advise gender diverse children, were the actual activities of the charity the main cause for scrutiny.

There was not a single case where trustees were investigated for perverting the aims of a charity; nor for commandeering an institution, a public building or a community asset and managing it in a manner or for purposes prejudicial to its customary users. That sort of carpetbagging appears to be acceptable as long as there are no financial or administrative irregularities. The Commission, it seems, are primarily concerned with matters of financial rectitude and administrative procedure, the letter rather than the spirit of the law. “We are not able to become involved in matters that relate to trustee decision making, where trustees are acting within their powers in the administration of a charity.”⁶



In December 2023, people of Totnes marched onto the Dartington Hall Estate to challenge the actions of its trustees.

So for example at Botton in 2012 the Commission were happy to investigate an anonymous whistleblower’s complaint that a resident co-worker was overpaid and “living in luxury”, but not the alleged breaches of the charity’s Objects voiced by the residents a year later. When MWC’s trustees changed the Objects of the charity from “sustainable education” to “promoting any profession” they received a rap on the knuckles, not for sabotaging the aims of the charity, but solely because they did so without notifying the Commission.

To compound their reluctance to act, the Charity Commission probably does not have the resources to be an effective regulator of the 170,000 charities under its care. Its operating budget is £32million, or £188 per charity. This is just 0.03 percent of the £96 billion that was the total income of all UK charities — more than the Dept. of Education spends on schooling. A levy of just a third of a percent on the income of all charities could increase the Commission’s budget ten-fold.

Under such a weak regulatory regime charities that have difficulties finding *bona fide* trustees can all too easily become prey to opportunists who know how to meet administrative requirements, yet have no scruples about abusing their powers.

Help at Hand?

If you face prosecution in the courts you can consult the duty solicitor, or apply for legal aid. If your future is to be decided by an employment tribunal you can call upon a union representative. But if the only recourse to justice you have is the Charity Commission, there is little out there to help you. The charity industry is huge and wealthy: there are professional trustees, expensive charity lawyers, and at least three charity magazines (*Charity Times*, *Third Sector* and *Civil Society*). But where is the charity that will help ordinary people face up to charities and to the Commission that is supposed to regulate them?

When it dawned upon us that the Charity Commission was not in the least bit interested in resolving the mess at Monkton Wyld Court, and we heard of others in the same plight, we thought there would be a website called Charity Watch, or Charity Commission Monitor, or similar, but we couldn’t find anything like that. It would not take a great deal of effort to start up such a website, a place where people could file their complaints, and compare notes. If anyone thinks that might be a good (or a bad) idea or has stuff they might want to upload, please get in touch with me through *The Land* magazine.

1 <https://www.gov.uk/government/publications/risk-framework-charity-commission/regulatory-and-risk-framework>

2 <https://www.gov.uk/government/publications/statutory-inquiries-into-charities-guidance-for-charities-cc46/statutory-inquiries-into-charities-guidance-for-charities>

3 <https://www.actionforbottan.org.uk>

4 <https://www.bbc.co.uk/news/articles/cg3p34g1vpgo> <https://www.bbc.co.uk/news/articles/c4gl6yg6zmro>

5 <https://www.actionforbottan.org.uk/Betrayal-of-Trust/charity-commission-and-cvt>

6 Email to Simon Fairlie from CC Whistleblowing Team 5 Dec. 2023.

See also: www.monktonwyldcourtcas.co.uk

Sears, Neil: Scythes at Dawn, *Daily Mail* 7.9.2024